



## **Sublease**

**Bowling Green C**  
**18 Kent Street, East Victoria Park**

Victoria Park Carlisle Bowling Club Inc  
(Sub-Landlord)

Perth Street Hockey League Inc  
(Sub-Tenant)

Our Ref: AON:20222015  
#3644601v5

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## Sublease

**Date**

20 / 05 / 2022

**Parties**

**Victoria Park Carlisle Bowling Club Inc** Registration No. A0510026C of 18 Kent Street, East Victoria Park WA 6101 (**Sub-Landlord**)

**Perth Street Hockey League Inc** Registration No. A1020433H of 35b Caledonian Avenue, Maylands WA 6051 (**Sub-Tenant**)

### Background

- A. The Head-Landlord is the owner of the Land and the Premises.
- B. The Sub-Landlord leases the Premises from the Head-Landlord on the terms and conditions set out in the Head Lease.
- C. The Sub-Landlord wishes to grant a sublease of the Premises to the Sub-Tenant for the Term subject to the terms of this Sublease.

### The parties agree

#### 1 Definitions and Interpretation

##### 1.1 Definitions

In this Sublease:

- (a) **API** means the Australian Property Institute Inc (WA office);
- (b) **Authority** means any government or any governmental, semi-governmental, local government, administrative, fiscal or judicial body, department, committee, commission, authority, tribunal, agency, Minister, statutory body or entity;
- (c) **Building** means all improvements erected on the Land from time to time (including service facilities) and any modifications, extensions or alterations to those improvements;
- (d) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Western Australia;
- (e) **Car Parking and Access Areas** means those parts of the Land which are designed by the Head Landlord for use in connection with car parking and vehicular access to and from the Land, including all car bays and vehicle access, exit and thoroughfare areas;
- (f) **Commencement Date** means the date specified in Item 4(b);
- (g) **Common Areas** means those parts of the Land and the Building (other than leased areas) which the Sub-Landlord designates as common areas;



- (h) **Electricity Costs** means the costs or charges in connection with the connection, usage or consumption of electricity which is used or consumed at the Premises or by the Sub-Tenant or which the Premises has the benefit of;
- (i) **Expiry Date** means the date specified in Item 4(c);
- (j) **Head Landlord** means the Town of Victoria Park;
- (k) **Head Lease** means the lease described in Item 3(a) as assigned, extended and varied from time to time, including by the documents (if any) described in Item 3(b), a copy of which is contained in Annexure C to this Sublease;
- (l) **Item** means, unless the context otherwise provides, an item in the Schedule;
- (m) **Land** means the land specified in Item 2;
- (n) **Law** includes any present or future requirement of any statute, regulation, proclamation, ordinance or by-law, whether State, Federal, local or otherwise;
- (o) **Lettable Area** means, in respect of an area:
  - (i) the area measured in accordance with the relevant method of measurement as recommended by the Property Council of Australia; or
  - (ii) the area measured in accordance with the method or criteria which the Sub-Landlord otherwise selects as being appropriate for the Premises;
- (p) **Loss** means any damage, loss, cost, expense, liability, claim, action, proceeding or demand, however arising and whether present or future, fixed or unascertained, actual or contingent;
- (q) **Make Good Obligations** means the obligations contained in clauses 4.18 and 4.19 of the Head Lease;
- (r) **Permitted Use** means the permitted use specified in Item 6;
- (s) **Premises** means the Premises described in Item 1;
- (t) **Rent** means the rent payable by the Sub-Tenant to the Sub-Landlord under this Sublease, as varied from time to time during the Term;
- (u) **Schedule** means, unless the context otherwise provides, the schedule to this deed;
- (v) **Signage** means any:
  - (i) signage, advertising materials or devices, ornamentation, decorations or logos; and
  - (ii) antennae, mast or other apparatus, awning or canopy;
- (w) **Sublease** means this deed of Sublease including the recitals (Background), schedules and any annexures;
- (x) **Sub-Landlord's Head Lease Obligations** means all of the Sub-Landlord's obligations as tenant under the Head Lease;
- (y) **Sub-Tenant's Associates** means each of the Sub-Tenant's sub-tenants, licensees, officers, employees, contractors, subcontractors, agents, customers, invitees and visitors;
- (z) **Sub-Tenant's Proportion** means, in respect of any Electricity Cost:
  - (i) the same proportion of that Electricity Cost as the Lettable Area of the Premises bears to the total Lettable Area of the premises the subject of the Head Lease; or

- (ii) if that Electricity Cost is attributable to, referable to or for the benefit of a group of premises including the Premises, then the same proportion of that item as the Lettable Area of the Premises bears to the total Lettable Area of that group of premises; or
  - (iii) if that Electricity Cost is directly assessed against or is entirely attributable to, referable to or for the benefit of, the Premises, the Sub-Tenant or any area that the Sub-Tenant has exclusive use of, then 100% of that item;
- (aa) **Term** means the period specified in Item 4 and includes any extension or renewal of it; and
- (bb) **Work Standards** means work (including any maintenance, repair or servicing work) that is carried out and completed:
- (i) promptly and efficiently and to the satisfaction of the Sub-Landlord (acting reasonably);
  - (ii) using good quality materials and contractors either approved by or nominated by the Sub-Landlord (acting reasonably);
  - (iii) in accordance with plans and specifications approved by the Sub-Landlord (acting reasonably);
  - (iv) in accordance with the directions of the Sub-Landlord (acting reasonably), including directions about the times when work may be done, when work must not be done, safety standards, noise levels, dust levels and odours;
  - (v) in a manner that does not interfere with or disturb any other occupants of the Land or of other properties;
  - (vi) in accordance with all relevant Laws and the requirements of all relevant Authorities; and
  - (vii) if the work involves the replacement of anything, then the replacement must be at least of equivalent quality and specification to the original.

## 1.2 Interpretation

In this Sublease, unless the context otherwise requires:

- (a) headings and clause numbers are for convenience only and do not affect the interpretation of this Sublease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) a reference to a person includes a corporation and any entity capable of being the subject of legal proceedings;
- (e) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (f) if a word or phrase is defined in this Sublease, its other grammatical forms have a corresponding meaning;
- (g) a reference to a party to this Sublease includes the party's successors, permitted substitutes and permitted assigns and, where applicable, the party's legal personal representatives; and



- (h) a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, on each of them severally and on any two or more of them jointly.

## **2 Grant of Sublease**

### **2.1 Sublease**

The Sub-Landlord grants a lease (by way of sublease) of the Premises to the Sub-Tenant for the Term subject to the terms and conditions in this Sublease and the Sub-Tenant accepts that grant.

### **2.2 Quiet enjoyment**

Subject to the Sub-Landlord's rights under this Sublease and the Head Lease and while the Sub-Tenant complies with all its obligations under this Sublease, the Sub-Tenant may occupy and use the Premises without the Sub-Landlord's interference or interruption.

## **3 Head Lease**

### **3.1 Sub-Tenant's acknowledgement**

The Sub-Tenant acknowledges that:

- (a) it has read and understands the Head Lease; and
- (b) this Sublease is dependent on the existence and continuance of the Head Lease; and
- (c) it accepts the redactions to the Head Lease (if any) on the basis that those redacted terms do not apply to this Sublease or are otherwise commercial terms between the Head Landlord and the Sub-Landlord.

### **3.2 Compliance by Sub-Tenant**

- (a) The Sub-Tenant must perform and observe the Sub-Landlord's Head Lease Obligations as if they were terms and conditions of this Sublease and unless this Sublease provides otherwise, this Sublease incorporates the provisions of the Head Lease as if:
  - (i) the Sub-Landlord were the landlord under the Head Lease;
  - (ii) the Sub-Tenant were the tenant under the Head Lease; and
  - (iii) the Premises were the premises under the Head Lease.
- (b) The Sub-Tenant's obligations under clause 3.2(a) do not extend to any Sub-Landlord's Head Lease Obligations which:
  - (i) require the payment of rent, outgoings, rubbish charges or electricity, gas telephone and water to the Head Landlord (including under clauses 4.1, 4.2, 4.3 and 4.4 of the Head Lease); or
  - (ii) relate to an option to renew the Head Lease or any other options or rights of first refusal granted to the Sub-Landlord under the Head Lease.
- (c) The Sub-Tenant's obligations under clause 3.2(a) include any obligation to repaint or refurbish the Premises to the standard required under the Head Lease at the times specified in the Head Lease.



- (d) For the avoidance of doubt, and subject to 3.2(b), to the extent that the Sub-Landlord's Head Lease Obligations are more onerous than the Sub-Tenant's obligations under this Sublease, the Sub-Tenant must comply with the Sub-Landlord's Head Lease Obligations.
- (e) The Sub-Tenant must not do anything which will or may:
  - (i) constitute a breach of the Head Lease by the Sub-Landlord; or
  - (ii) prejudice the Sub-Landlord's interest in the Head Lease or the premises the subject of the Head Lease.
- (f) If the Sub-Tenant fails to comply with the Sub-Landlord's Head Lease Obligations under this clause 3.2 within the time specified by the Sub-Landlord, the Sub-Landlord may, without prejudice to its other legal rights, comply with the relevant Sub-Landlord's Head Lease Obligations. The Sub-Tenant must promptly on demand reimburse the Sub-Landlord's reasonable costs of doing so.

### **3.3 Observe Head Lease**

The Sub-Landlord must observe and perform all of its obligations in the Head Lease except where those obligations are to be observed or performed by the Sub-Tenant under the provisions of this Sublease.

### **3.4 Head Landlord's Obligations**

- (a) Subject to clause 3.4(b), the Sub-Landlord must, if requested by the Sub-Tenant in writing, use its reasonable endeavours to enforce the Head Landlord's obligations under the Head Lease which relate to the Premises.
- (b) The Sub-Landlord's obligations under clause 3.4(a) do not extend to a requirement for the Sub-Landlord to institute proceedings against the Head Landlord.

### **3.5 Head Landlord's Rights**

The Sub-Landlord is entitled to exercise all of the Head Landlord's rights under the Head Lease in respect of the Premises, the Common Areas and the Land.

### **3.6 Head Landlord's consents**

- (a) The Sub-Landlord must procure the Head Landlord's consent to this Sublease as soon as possible following the execution of this Sublease on the condition that nothing in this Sublease:
  - (i) prejudices or discharges the liability of the Sub-Landlord to the Head-Landlord under the Head Lease; or
  - (ii) waives any of the terms and conditions of the Head Lease.
- (b) If the Sub-Tenant is required to obtain the Sub-Landlord's consent to anything under this Sublease, then if required by the Head Lease, the Sub-Landlord must at the Sub-Tenant's cost use reasonable endeavours to obtain the Head Landlord's consent and obtain that consent before doing that thing. The Head Landlord has the same rights in respect of giving or withholding that consent as it does under the Head Lease. The Sub-Tenant must at its cost cooperate with the Sub-Landlord and promptly provide all relevant details and materials to assist the Sub-Landlord to seek Head Landlord's consent.
- (c) If the Head Landlord does not consent to something, the Sub-Landlord may also refuse its consent.

**3.7 Notice from Head Landlord**

- (a) If the Head Landlord gives any notice to the Sub-Tenant, the Sub-Tenant must give the Sub-Landlord a copy of the notice within 2 Business Days of receiving the notice from the Head Landlord.
- (b) If the Head Landlord gives any notice to the Sub-Landlord that affects or may affect the rights and obligations of the Sub-Tenant under this Sublease or the Premises, the Sub-Landlord must give the Sub-Tenant a copy of the notice within 2 Business Days of receiving the notice from the Head Landlord.

**3.8 Access**

The Sub-Tenant must give the Head Landlord the same access and other rights in relation to the Premises that the Sub-Landlord is required to give to the Head Landlord under the Head Lease.

**3.9 Termination of Head Lease**

- (a) If the Head Lease is terminated for any reason, notwithstanding any provision of this Sublease to the contrary:
  - (i) this Sublease automatically terminates without notice and the Sub-Tenant must yield up the Premises in a state of repair, order and condition consistent with this Sublease;
  - (ii) the Sub-Tenant is not entitled to make any claim against the Sub-Landlord unless the termination is caused by the Sub-Landlord's breach of the Head Lease;
  - (iii) the Sub-Tenant agrees that it will not make any claim against the Sub-Landlord or the Head Landlord, or seek an order, for the vesting of the Head Lease in relation to the Premises in the Sub-Tenant; and
  - (iv) the rights of either party in respect of any claim for a breach of this Sublease arising before the date of termination are not affected.
- (b) The Sub-Landlord must not surrender the Head Lease during the Term without the Sub-Tenant's prior written consent.

**4 Rent**

The Sub-Tenant must pay the Rent specified in Item 5 of the Schedule:

- (a) to the Sub-Landlord at the Sub-Landlord's address as stated in this Sublease or as the Sub-Landlord otherwise directs in writing from time to time; and
- (b) annually within 10 Business Days of the determination of the Rent payable in accordance with Item 7.5.

**5 Other Amounts Payable by Sub-Tenant**

- (a) The Sub-Tenant must pay the Sub-Landlord all amounts (other than rent) which the Sub-Landlord must pay under the Head Lease by the times stated in the Head Lease for the payment of the relevant amount by the Sub-Landlord as tenant.
- (b) If an amount the Sub-Landlord has to pay under the Head Lease relates to an area greater than the sub-let Premises, the Sub-Tenant only has to pay a proportion of



the amount, being the proportion that the lettable area of the Premises bears to the lettable area of the premises the subject of the Head Lease.

## **6 Electricity Costs**

- (a) Subject to Item 7.3, the Sub-Tenant must pay for all Electricity Costs in accordance with this clause 6.
- (b) If the Electricity Costs are not separately metered or assessed against the Sub-Tenant or the Premises, the Sub-Tenant must pay a proportion of that Electricity Cost, being:
  - (i) the Sub-Tenant's Proportion; or
  - (ii) if required by the Sub-Landlord (acting reasonably), such other proportion as the Sub-Landlord considers fair and reasonable having regard to the Sub-Tenant's use of electricity at the Premises.
- (c) The Sub-Tenant must pay the Electricity Costs to the Sub-Landlord, the Head-Landlord, or directly to the relevant Authority (as required by the Sub-Landlord) within 14 days of demand by the Sub-Landlord.

## **7 Use of Premises**

### **7.1 Permitted Use**

The Sub-Tenant must only use the Premises for the Permitted Use.

### **7.2 Operating Hours**

The Sub-Tenant must only operate its business at the Premises during the times that are permitted by Law.

### **7.3 Compliance with statutory requirements**

- (a) The Sub-Tenant must at its own expense:
  - (i) obtain all consents required from any Authority to carry on the Permitted Use at the Premises; and
  - (ii) observe and comply with all Laws, rules, regulations, by-laws, planning permits, conditions, requirements and notices of any Authority relating to the use, occupation and business of the Premises.
- (b) The Sub-Tenant must at all times during the Term hold and maintain all necessary permits, licences and approvals required for the Permitted Use including those relating to:
  - (i) building and planning;
  - (ii) public health and safety;
  - (iii) employment and industrial relations; and
  - (iv) the environment and protection of the environment, person or property.

### **7.4 Occupational Health and Safety**

- (a) The Sub-Tenant agrees that, for the purposes of the *Work Health and Safety Act 2020* (WA), the Sub-Tenant has control of the Premises.



- (b) The Sub-Tenant releases and indemnifies and keeps the Sub-Landlord and the Head Landlord indemnified from and against all Loss for which the Sub-Landlord and the Head Landlord is, or may become, liable by reason of that Act in respect of the Premises or the use of the Premises by the Sub-Tenant.
- (c) The Sub-Tenant occupies and uses the Premises at its own risk.

#### **7.5 No warranty from Sub-Landlord**

- (a) The Sub-Landlord does not warrant, expressly or impliedly, that the Premises:
  - (i) are suitable for any purpose;
  - (ii) may be used for the Permitted Use; or
  - (iii) are now or will remain suitable or adequate for all or any of the Sub-Tenant's purposes.
- (b) Except as may otherwise be expressly provided for in this Sublease:
  - (i) the Premises is taken by the Sub-Tenant under this Sublease on an 'as is' basis;
  - (ii) the Sub-Tenant acknowledges and declares that in entering into this Sublease, it has not relied on any promise, representation, undertaking or warranty given by or on behalf of the Sub-Landlord as to the suitability of the Premises or its facilities, finishes or amenities for any business or undertaking to be carried on or conducted there; and
  - (iii) this Sublease is not affected and the Sub-Landlord is not responsible or liable to the Sub-Tenant in any way if at any time:
    - (A) the Permitted Use is not permitted (or becomes prohibited) by any Law or Authority; or
    - (B) the Sub-Tenant is unable to obtain or maintain any necessary permit, licence or other approval that is required for the Permitted Use.

#### **8 Care of the Premises**

The Sub-Tenant must at its own expense and at all times during the Term comply with all of the Sub-Landlord's Head Lease Obligations in connection with cleaning, maintenance, repair and replacement and security as if they were set out in full in this Sublease.

#### **9 Signage**

- (a) The Sub-Tenant must not display, place or install any Signage on any part of the Premises, the Building or the Land unless it has first:
  - (i) obtained all necessary approvals from each relevant Authority and provided a copy of those approvals to the Sub-Landlord; and
  - (ii) obtained the Sub-Landlord's written approval (including to the design, location and content of any Signage), which approval must not be unreasonably withheld or delayed.
- (b) The Sub-Tenant must:
  - (i) install the permitted Signage in accordance with the Work Standards;

- (ii) maintain its Signage in good condition and repair at all times; and
  - (iii) comply with all Laws and the requirements of each relevant Authority in respect of its Signage.
- (c) If any Signage erected on the exterior of the Premises with the Sub-Landlord's consent is powered or illuminated, the Sub-Tenant must:
  - (i) ensure that any light illuminating the sign remains on during such times set by the Sub-Landlord from time to time; and
  - (ii) if required by the Sub-Landlord, install and connect a separate electricity meter to measure the electricity consumed by the sign.
- (d) Despite anything else in this Sublease to the contrary, the Sub-Landlord may grant a licence to another person to erect, install and maintain signage on any part of the Land or the Building provided that the Premises is not a standalone premises and the signage does not unreasonably interfere with the quiet enjoyment of the Premises by the Sub-Tenant.

## **10 Management and Control of the Land**

### **10.1 Use of Common Areas**

The Sub-Tenant may use the Common Areas but only for the purpose for which they were designed and subject to the terms of this Sublease and the terms of the Head Lease as if they were set out in full in this Sublease.

### **10.2 Sub-Tenant's Rights**

The Sub-Tenant may exercise all of the rights of the Sub-Landlord under the Head Lease in respect of the Common Areas and the Car Parking and Access Areas as if the Sub-Tenant were the Sub-Landlord.

## **11 Car Parking**

### **11.1 Sub-Tenant's obligations**

The Sub-Tenant must:

- (a) only use the Car Parking and Access Areas for the purpose for which they were designed;
- (b) ensure that the Sub-Tenant's and the Sub-Tenant's Associates' vehicles are parked within the car bays and do not obstruct any of the access ways or areas;
- (c) except in the case of emergency repairs, not use the Car Parking and Access Areas for cleaning or repairing vehicles; and
- (d) not allow any vehicle, so far as it is within the Sub-Tenant's reasonable control, to drip oil or any other harmful substance on any part of the Land.

### **11.2 Risk and liability**

- (a) The parking of motor vehicles on any part of the Land will at all times be at the risk of the Sub-Tenant.
- (b) The Sub-Landlord is not liable for any Loss to any personal property suffered by the Sub-Tenant or the Sub-Tenant's Associates arising out of:



- (i) the Sub-Tenant's or the Sub-Tenant's Associates' use of the Car Parking and Access Areas; or
  - (ii) any act or omission by the Sub-Tenant or the Sub-Tenant's Associates or any act or omission by any other person, whether or not they are authorised to use the Car Parking and Access Areas.
- (c) The Sub-Tenant indemnifies the Sub-Landlord and the Head Landlord from and against all Loss (including injury to any person) to the extent that it is caused by the Sub-Tenant or the Sub-Tenant's Associates whilst using the Car Parking and Access Areas or operating any vehicle on the Land.

## 12 Insurance

- (a) Without limiting the Sub-Tenant's obligations with respect to insurance under the Head Lease, the Sub-Tenant must arrange and maintain insurance in respect of
- (i) public liability in respect of the Premises, for at least \$20 million, or any higher amount which the Sub-Landlord may require (acting reasonably) from time to time; and
  - (ii) damage to, and loss of the Sub-Landlord's and Sub-Tenant's chattels and fixtures in the Premises, for at least the full replacement cost of these chattels and fixtures,
- throughout the Term and on terms acceptable to the Sub-Landlord.
- (b) All of the insurance policies taken out by the Sub-Tenant in accordance with this clause:
- (i) must be endorsed to note the Head-Landlord's interest as owner of the Premises; and
  - (ii) must not exclude cover against malicious acts by third parties.
- (c) The Sub-Tenant must give the Sub-Landlord satisfactory evidence of insurance which the Sub-Landlord requests in relation to the insurance policies required under clause 12(a).
- (d) If the Sub-Tenant does or permits anything to be done which invalidates or voids any insurance policy taken out by or for the benefit of the Sub-Landlord or the Head-Landlord, then the Sub-Tenant is responsible for any damage or loss which the Sub-Landlord or the Head-Landlord consequently suffers or incurs.
- (e) If any premium for insurances taken out by the Sub-Landlord is increased because of:
- (i) the use of the Premises by the Sub-Tenant;
  - (ii) any alteration or addition to the Premises by or at the request of the Sub-Tenant; or
  - (iii) something which the Sub-Tenant does or fails to do, or allows to be done or not done,
- then the Sub-Tenant must pay to the Sub-Landlord the amount of that increase on demand.



**13 Sub-Tenant's Obligations when Lease Ends**

At the end of this Sublease, the Sub-Tenant must:

- (a) vacate the Premises and surrender all keys to the Sub-Landlord; and
- (b) comply with all of the Make Good Obligations in the Head Lease as if they were set out in full in this Sublease.

**14 Exclusion of Liability**

- (a) The Sub-Landlord is not liable for any damage or loss to any property, or injury to any person, no matter how it happens, except to the extent caused or contributed to by the Sub-Landlord or someone for whom the Sub-Landlord is responsible.
- (b) The Head-Landlord is not liable for any damage or loss to any property, or injury to any person, no matter how it happens, except to the extent caused or contributed to by the Head-Landlord or someone for whom the Head-Landlord is responsible.

**15 Indemnity by Sub-Tenant**

- (a) The Sub-Tenant is liable for (and indemnifies the Sub-Landlord and the Head-Landlord against) all Loss for which the Sub-Landlord or the Head-Landlord is, or may become, liable in connection with:
  - (i) the Sub-Tenant's use and occupation of the Premises or the Land;
  - (ii) any breach of this Sublease by, or act or omission of, the Sub-Tenant or the Sub-Tenant's Associates;
  - (iii) any injury to, or death of, any person on the Premises;
  - (iv) any works performed by the Sub-Tenant under this Sublease; or
  - (v) anything entering, leaving or affecting the Premises within the control of the Sub-Tenant.
- (b) The Sub-Tenant's liability and indemnity under clause 15(a) does not apply to the extent that any Loss arises out of the Sub-Landlord's or Head-Landlord's negligence, or the Sub-Landlord's breach of this Sublease.

**16 No dealing with Sublease**

The Sub-Tenant must not assign, sublet, mortgage or otherwise part with possession of this Sublease or any part of the Premises in any way without the Sub-Landlord's and the Head Landlord's prior written consent.

**17 Interest on overdue amounts**

If the Sub-Tenant does not pay any money payable to the Sub-Landlord under this Sublease or under a judgment obtained by the Sub-Landlord against the Sub-Tenant within 14 days of the due date for payment, the Sub-Tenant must pay interest to the Sub-Landlord on the outstanding amount:

- (a) from the date the payment becomes due until the date the payment is made; and

- (b) at the rate equal to 2% per annum above the interest rate quoted by the Sub-Landlord's bank for loans not exceeding \$100,000,

which interest accrues daily and is payable on written demand by the Sub-Landlord.

## 18 Costs

- (a) The Sub-Tenant must pay the Sub-Landlord's and the Head-Landlords reasonable costs and disbursements (including legal costs) in connection with:
- (i) the negotiation, preparation and completion of this Sublease;
  - (ii) any extension or renewal of this Sublease;
  - (iii) any assignment or subletting;
  - (iv) any breach of this Sublease by the Sub-Tenant;
  - (v) the exercise of a power under this Sublease;
  - (vi) a request made by the Sub-Tenant under this Sublease; and
  - (vii) any consent sought from the Head-Landlord or the Sub-Landlord under this Sublease.
- (b) The Sub-Tenant must pay for any duty assessed on this Sublease.
- (c) Anything the Sub-Tenant must do under this Sublease must be done at the Sub-Tenant's cost, unless this Sublease expressly provides otherwise.

## 19 GST

- (a) In this clause:
- (i) **GST** has the same meaning as in the GST Act and includes any replacement or subsequent similar tax;
  - (ii) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
  - (iii) all terms which are defined in the GST Act have the same meaning as they are given by the GST Act when they are used in this clause.
- (b) Unless otherwise expressly provided in this Sublease, the Rent and any other consideration or money payable by the Sub-Tenant under this Sublease is expressed as a GST exclusive amount.
- (c) If the Sub-Landlord pays or is liable to pay any GST on the Rent or any other taxable supply made in respect of or in connection with this Sublease, then the Sub-Tenant must pay to the Sub-Landlord the amount of that GST at the same time the payment for the taxable supply is due under this Sublease.
- (d) The Sub-Tenant indemnifies the Sub-Landlord for the amount of any GST the Sub-Landlord pays or is liable to pay on a taxable supply made in respect of or in connection with this Sublease.
- (e) The Sub-Landlord must issue a tax invoice to the Sub-Tenant in respect of a taxable supply as and when required by the GST Act.



- (f) The amount for GST payable by the Sub-Tenant under this clause will be reduced by the amount of any input tax credit in relation to that amount which the Sub-Landlord has received or claims and is entitled to receive.

## **20 Notices**

### **20.1 Requirement for writing**

A notice, demand, consent or other communication (**Notice**) given or made under this Sublease must be in writing and:

- (a) signed by the sender, a person duly authorised by the sender, or an authorised officer of the sender; or
- (b) in the case of email, set out the full name and position or title of the sender, the person duly authorised by the sender, or an authorised officer of the sender.

### **20.2 Serving notices**

A Notice given or made under this Sublease must be delivered to the intended recipient by:

- (a) hand (including by courier) to the address specified in this Sublease or the address last notified by the intended recipient to the sender;
- (b) post to the address specified in this Sublease or the address last notified by the intended recipient to the sender;
- (c) email to the email address (if any) specified in this Sublease or the email address last notified by the intended recipient to the sender.

### **20.3 When effective**

- (a) Subject to clause 20.3(b), a Notice will be taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting;
  - (iii) in the case of email, at the earliest of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the intended recipient confirms receipt of the email by reply email; and
    - (C) the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within the next 3 hour period, an automated message that the email has not been delivered.
- (b) If, under clause 20.3(a), a Notice would be taken to be given or made on a day that is not a business day in the place to which a Notice is sent or at later than 5.00pm (in the place that a Notice is sent to), it will be taken to have been duly given or made at the start of business on the next business day in that place.



## 21 Special Conditions

The terms and conditions set out in Item 7 (if any) (**Special Conditions**) are incorporated into this Sublease and if there is any inconsistency between the Special Conditions and the other terms and condition of this Sublease, then the Special Conditions prevail to the extent of that inconsistency.

## 22 General

### 22.1 Confidential Information

- (a) For the purposes of this clause 22.1 **Confidential Information** means:
- (i) the terms of this Sublease;
  - (ii) the amount of money payable by the Sub-Tenant;
  - (iii) any incentives granted by the Sub-Landlord to the Sub-Tenant at any time; and
  - (iv) information designated by the Sub-Landlord (acting reasonably) as being confidential.
- (b) The Sub-Tenant must not disclose any Confidential Information, directly or indirectly to any person except:
- (i) to the extent that the Confidential Information is in the public domain, including if this Sublease is registered at Landgate;
  - (ii) in connection with an exercise of rights or a dealing with rights or obligations under this Sublease;
  - (iii) to its legal and other advisers and auditors; or
  - (iv) as required by any Law or any stock exchange.

### 22.2 Sub-Landlord's consents and approvals

- (a) Except as otherwise provided in this Sublease, any consent or approval which may be granted by the Sub-Landlord under this Sublease may be granted, refused or given subject to conditions, in the absolute discretion of the Sub-Landlord.
- (b) If the Sub-Tenant requests the consent of the Sub-Landlord, the Sub-Tenant must pay to the Sub-Landlord all reasonable costs and expenses reasonably incurred by the Sub-Landlord (including legal costs) in considering that request, whether or not the consent is granted.

### 22.3 Sub-Landlord may act by agent

All acts and things which the Sub-Landlord is required or able to do under this Sublease may be done by the Sub-Landlord or any solicitor, agent, contractor or employee of the Sub-Landlord.

### 22.4 Statutory powers add to express powers

Unless inconsistent with the provisions of this Sublease, the powers conferred on the Sub-Landlord under any statute are in addition to the powers conferred on the Sub-Landlord by this Sublease.

**22.5 Execution by Attorney**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstances that might affect his or her authority to do so.

**22.6 Time for payment**

Unless otherwise provided by this document, a party must pay any amount due to the other within 10 Business Days of receiving a tax invoice for the amount.

**22.7 No waiver**

- (a) A failure to exercise or a delay in exercising any right, power or remedy under this Sublease does not operate as a waiver.
- (b) No consent or waiver expressed or implied by the Sub-Landlord to or in respect of any particular breach of the Sub-Tenant's obligations under this Sublease is to be construed as a consent to or waiver of any other breach of that obligation or any other term contained or implied in this Sublease.
- (c) A waiver is not valid or binding on the Sub-Landlord unless it is made in writing.

**22.8 No merger**

The terms and conditions of this Sublease or anything done under or in connection with this Sublease or any other agreement between the parties will not operate as a merger of any of the rights and remedies of the parties in or under this Sublease, or in or under any other agreement, all of which will continue in full force and effect.

**22.9 Severance**

If any provision of this Sublease or its application to any person or circumstance is or becomes invalid or unenforceable, that provision will be taken to be omitted without invalidating or modifying the remaining provisions of this Sublease, which will continue in full force and effect as if the invalid or unenforceable provision had not been included in it.

**22.10 Survival of covenants**

The Sub-Tenant's obligation to observe and perform the Sub-Tenant's covenants and obligations under this Sublease will survive the expiry or earlier termination of this Sublease.

**22.11 No Moratorium**

Unless application is compulsory by Law, no statute, ordinance, proclamation, order, regulation or moratorium present or future applies to this Sublease so as to prejudicially affect any rights, powers, remedies or discretions given to the Sub-Landlord.

**22.12 Indemnities**

Each indemnity in this Sublease is independent from the Sub-Tenant's other obligations and continues during this Sublease and after this Sublease ends. The Sub-Landlord may enforce an indemnity before incurring expense.

**22.13 Entire agreement**

This Sublease covers the whole of the agreement between the parties and no further or other covenants or provisions, whether in respect of the Premises or otherwise, will be considered to be implied or to arise between the parties by way of any collateral or other agreement.



**22.14 Party preparing documents not to be disadvantaged**

No rules of construction will apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Sublease or any part of it.

**22.15 Further co-operation**

Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this Sublease.

**22.16 Execution by counterparts**

- (a) This Sublease may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (b) A party may execute this Sublease or any counterpart and exchange it by fax or as an electronic copy by email.

**22.17 Governing law**

This Sublease will be construed in accordance with and governed by the Law of Western Australia. Each party submits to the non-exclusive jurisdiction of its courts.

## Schedule – Details

### 1 Premises (clause 1.1(s))

Bowling Green C, 18 Kent Street, East Victoria Park comprising an area of approximately 1362m<sup>2</sup> and being the premises outlined in red on the plan attached to this Sublease as Annexure A.

### 2 Land (clause 1.1(m))

- (a) Lot 50 on Diagram 11996 being the whole of the land in Certificate of Title Volume 1077 Folio 393.
- (b) Lot 6 on Plan 3844 being the whole of the land in Certificate of Title Volume 815 Folio 109.
- (c) Lot 51 on Diagram 17390 being the whole of the land in Certificate of Title Volume 1172 Folio 325.
- (d) Lot 16 on Plan 3844 being part of the land in Certificate of Title Volume 34 Folio 363.

### 3 Head Lease (clause 1.1(k))

#### (a) Head Lease document

A Lease dated 1 November 2015 made between the Head-Landlord (as lessor) and the Sub-Landlord (as lessee).

#### (b) Documents assigning, extending and varying the Head Lease

An Extension of Lease dated 25 November 2020 made between the Head-Landlord (as landlord) and the Sub-Landlord (as tenant).

### 4 Term (clause 1.1(aa))

- (a) Period: The period starting on the Commencement Date and terminating on the Expiry Date.
- (b) Commencement Date: The date of execution of this deed by all parties.
- (c) Expiry Date: 31 October 2025

### 5 Rent (clause 1.1(t))

\$4,000.00 plus GST (but subject to adjustment in accordance with Item 7.5).

### 6 Permitted Use (clause 1.1(r))

Community sports and recreation; roller hockey and hockey related community events.

### 7 Special conditions (clause 21)

#### 7.1 Access Conditions

Notwithstanding anything else in this Sublease to the contrary, the Sub-Tenant will not be entitled to access and use the Premises until:

- (a) execution of this lease by all parties; and



- (b) the Sub-Tenant has:
  - (i) paid all costs that the Sub-Tenant is required to pay under clause 18 (if any); and
  - (ii) provided all insurance certificates to the Sub-Landlord in accordance with this Sublease.

## 7.2 Sub-Tenant's Works

- (a) The Sub-Tenant must (at its own cost) carry out and complete the following works to the Premises (**Sub-Tenant's Works**):
  - (i) lay a slab over the Premises as shown on the sketches contained in Annexure B to this Sublease;
  - (ii) install lighting in the locations and to the specifications agreed between the Sub-Landlord and the Sub-Tenant in writing; and
  - (iii) such other works as may be required to meet its occupational and operational requirements for the Premises.
- (b) The Sub-Tenant must:
  - (i) promptly provide to the Sub-Landlord a copy of all plans and specifications for the proposed Sub-Tenant's Works (**Plans and Specifications**); and
  - (ii) not commence the Sub-Tenant's Works until it has obtained:
    - (A) the Sub-Landlord's approval to the Plans and Specifications, which approval will not be unreasonably withheld or delayed; and
    - (B) the approval of any relevant Authority (to the extent that it is necessary) and provided a copy of those approvals to the Sub-Landlord.
- (c) The Sub-Landlord's approval (if given) does not mean that the Plans and Specifications are adequate or suitable for the Sub-Tenant's purpose or comply with any statutory or other relevant requirements.
- (d) As soon as the Sub-Tenant has obtained all required approvals under Item 7.2(b)(ii), the Sub-Tenant must promptly commence and complete the Sub-Tenant's Works in accordance with the Work Standards.
- (e) In carrying out the Sub-Tenant's Works, the Sub-Tenant must keep the Premises clean and tidy and regularly remove from the Premises all waste and debris generated by the Sub-Tenant's Works.
- (f) If the Sub-Tenant's Works (or any part of them) do not comply with the requirements of this Item 7.2 (regardless of when that is made known to, or discovered by, the Sub-Landlord), then the Sub-Tenant must immediately carry out, at the Sub-Tenant's expense, all required alterations, repairs or replacements to the reasonable satisfaction of the Sub-Landlord. This clause survives the termination of this Sublease and the expiry of the Term.

## 7.3 Electricity Costs

The Sub-Tenant is not required to pay Electricity Costs under clause 6 until the completion of that part of the Sub-Tenant's Works described in Item 7.2(a)(ii).

#### 7.4 Redevelopment

The Sub-Tenant acknowledges and accepts the terms and conditions of clause 11.9 of the Head Lease (Redevelopment of Premises) which apply to this Sublease and are incorporated into this Sublease in accordance with clause 3.2(a).

#### 7.5 Determination of Rent

(a) In this Item 7.5:

- (i) **Base Turnover** means the Turnover for the period of 12 months immediately prior to the Commencement Date;
- (ii) **Final Period** means the period commencing on the last anniversary of the Commencement Date during the Term and ending on the Expiry Date;
- (iii) **Head Leased Premises** means the 'Premises' as defined in the Head Lease;
- (iv) **Minimum Amount** means:
  - (A) for the purpose of Item 7.5(c), \$4,000.00 (plus GST); and
  - (B) for the purpose of Item 7.5(d), the amount equal to A in the following formula:

$$A = \$4,000.00 \times \frac{\text{No. of days in Final Period}}{365} \text{ (plus GST)}$$

- (v) **Year** means any 12 month period during the Term starting on the Commencement Date or on an anniversary of the Commencement Date;
- (vi) **Turnover** means all money received or receivable, whether by cash, credit, charge or instalment for the sale, lease, hire, disposal or provision of any good or service by the Sub-Landlord in connection with the business operated by the Sub-Landlord on the Head Leased Premises, including any money that is received or receivable from:
  - (A) any sale or service that is delivered, made or provided from the Head Leased Premises, wherever and however originating;
  - (B) any order which originates at, or is accepted at, the Head Leased Premises, but where delivery or performance of which is made from, or at any place other than, the Head Leased Premises and vice versa;
  - (C) transactions originating on the Head Leased Premises, where the goods sold are drawn from stock not kept at the Premises;
  - (D) any order originating from mail, facsimile, telephone, internet or otherwise but which is received at, or lodged from, the Premises, or filled by the business carried on at the Head Leased Premises;
  - (E) sales from any mechanical or other vending device on the Head Leased Premises;
  - (F) any activity in the normal course which would or should be credited or attributed to the business carried on from the Head Leased Premises; and



- (G) GST received in respect of any sale.
- (b) The Sub-Landlord must:
- (i) within 20 Business Days after the Commencement Date, give the Sub-Tenant a written statement of the Base Turnover (with reasonable and sufficient information to substantiate such Base Turnover);
  - (ii) within 20 Business Days after the end of each Year, give the Sub-Tenant a written statement of the Turnover for the relevant Year (with reasonable and sufficient information to substantiate such Turnover); and
  - (iii) within 20 Business Days after the Expiry Date, give the Sub-Tenant a written statement of the Turnover for the Final Period (with reasonable and sufficient information to substantiate such Turnover).
- (c) If the Turnover for any Year:
- (i) exceeds the Base Turnover by the Minimum Amount or more, then the Sub-Tenant is not required to pay any Rent with respect to that Year;
  - (ii) exceeds the Base Turnover by an amount (**Amount**) less than the Minimum Amount, then the Rent payable with respect to that Year will be reduced by that Amount;
  - (iii) is less than the Base Turnover, then the Rent payable with respect to that Year will be the Minimum Amount.
- (d) If the Turnover for the Final Period:
- (i) exceeds the Base Turnover by the Minimum Amount or more, then the Sub-Tenant is not required to pay any Rent with respect to that Year;
  - (ii) exceeds the Base Turnover by an amount (**Amount**) less than the Minimum Amount, then the Rent payable with respect to the Final Period will be the Minimum Amount less that Amount;
  - (iii) is less than the Base Turnover, then the Rent payable with respect to the Final Period will be the Minimum Amount.
- (e) For the purpose of clause 4(b) and Item 7.5(f), the Rent payable by the Sub-Tenant will be determined on the day that the Sub-Landlord gives the Sub-Tenant a written statement of Turnover in accordance with Item 7.5(b)(ii) or 7.5(b)(iii) (as the case may be).
- (f) If the Sub-Tenant disputes the amount of Rent payable for any Year or the Final Period as determined under this Item 7.5, then the Sub-Landlord and the Sub-Tenant must:
- (i) confer in good faith to reach an agreement as to the Rent payable for that period; and
  - (ii) if the Sub-Landlord and the Sub-Tenant fail to reach an agreement under Item 7.5(f)(i) within 15 Business Days of the determination of the Rent payable for that period, then the Rent payable for that period is to be determined at the joint expense of the Sub-Landlord and the Sub-Tenant by a suitably qualified person nominated by the Chair of the API. Either the Sub-Landlord or the Sub-Tenant may ask the Chair to nominate that person. That person will act as an expert and not an arbitrator.





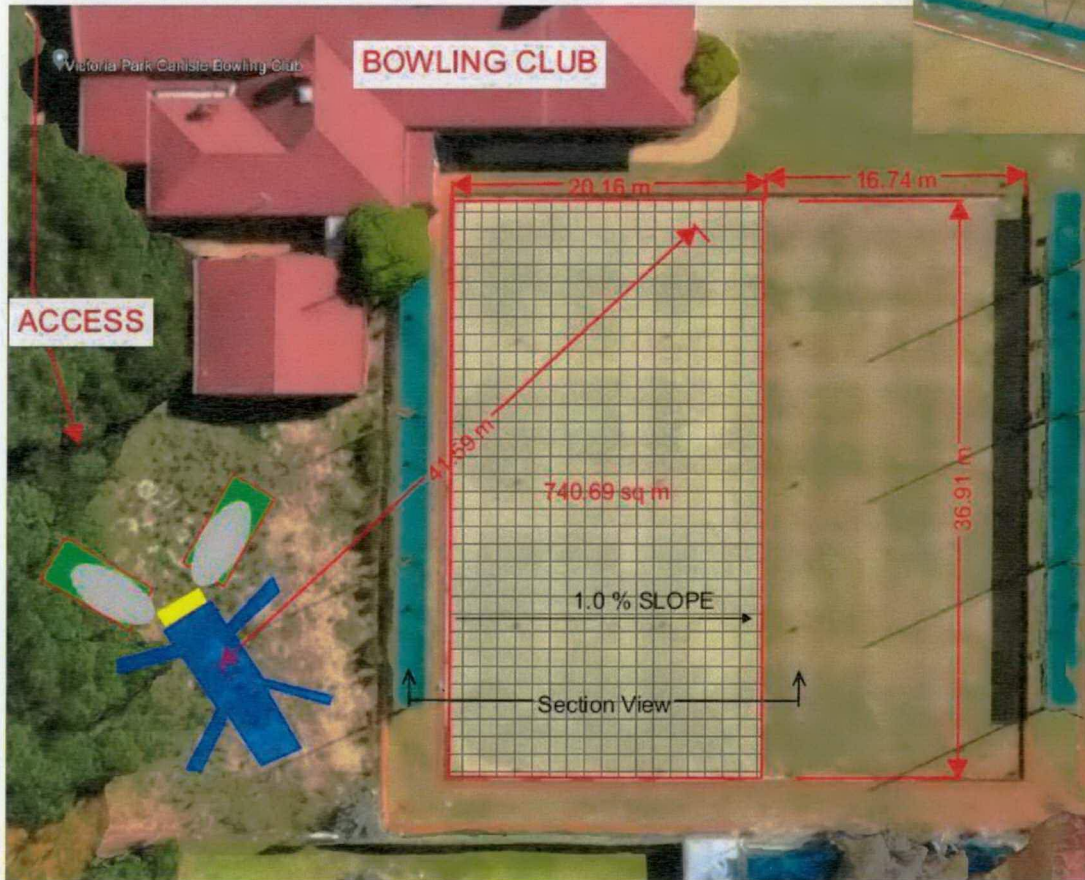
**Annexure A - Plan of Premises**





SRHL  
VIC PARK BOWLS CLUB  
SLAB - SKETCHES

REV 1



- LEGEND**
-  CONCRETE PUMP
  -  SLAB 25MPa  
SL82 MESH
  -  CONCRETE TRUCK

**NOTES**

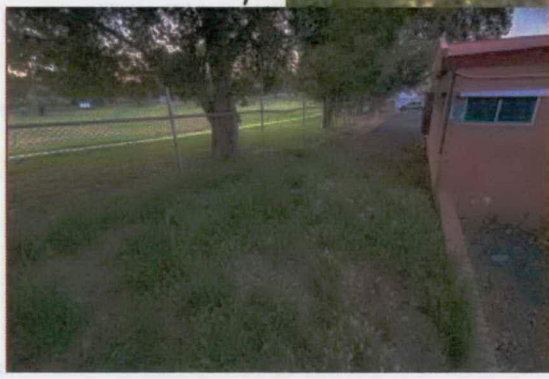
Concrete grade: 25MPa.  
 Steel reinforcement SL82 MESH 500MPa.  
 Bar chairs to be used as required to not allow mesh to move during concrete installation.  
 PVC plastic sheet underlay (min. 300mm overlap between sheets)  
 Sand to be compacted in layers

Annexure B - Sub-Tenant's Works



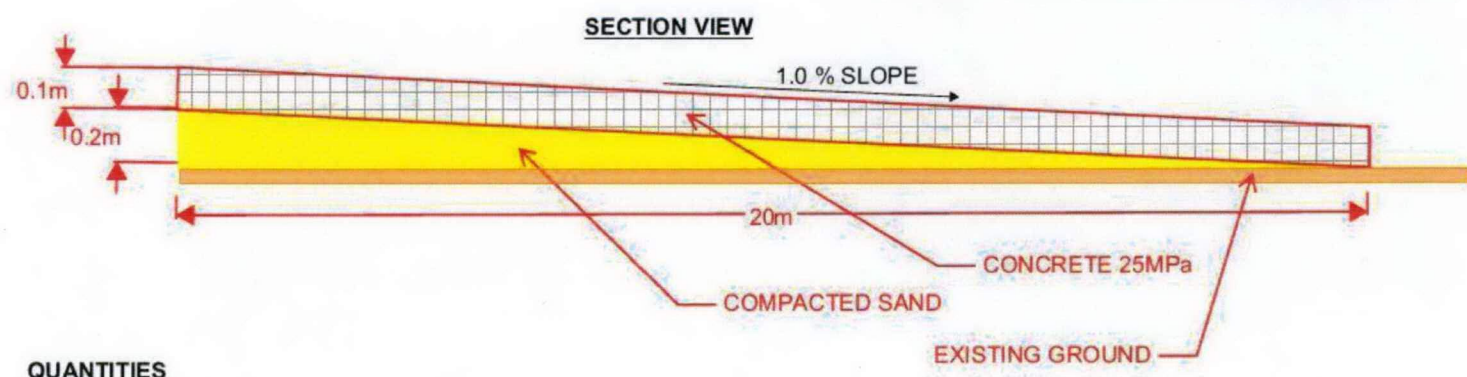
SRHL  
VIC PARK BOWLS CLUB  
SLAB - SKETCHES ACCESS

REV 1



SRHL  
VIC PARK BOWLS CLUB  
SLAB - CROSS SECTION

REV 1



**QUANTITIES**

CONCRETE -  $20 \times 37 \times 0.1 = 740 \times 0.1 = 74\text{m}^3$

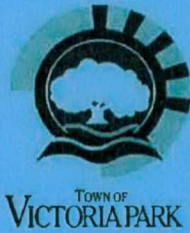
SL82 MESH -  $740\text{m}^2$

PVC SHEET UNDERLAY (min. 300mm overlap between sheets) -  $740\text{m}^2$

SAND -  $0.2 \times 20 \times 37 \times 0.5 = 74\text{m}^3$



**Annexure C - Head Lease**



**CERTIFICATION FOR  
SIGNING & SEALING DOCUMENTS**

Details of Documents:

Victoria Park Carlisle Bowling Club Lease of Premises at 18 Kent Street  
for five years from 1 November 2015 plus further five year option.

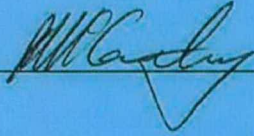
Please attach a copy of Council's resolution.

Item 12.5 OCM 13 October 2015

I certify that this document has been checked, reflects Council authorisation  
and is correct in all respects.

NAME: Terry McCarthy

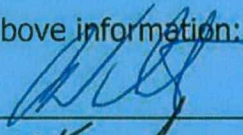
TITLE: Land & Properties Project Officer

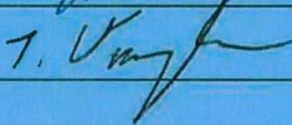
SIGNATURE:  DATE: 12 November 2015

ENDORSED BY DIRECTOR:  
  
(or delegate as appropriate)

Does this document require the common seal? YES  NO

I sign this document on the basis of the above information:

CHIEF EXECUTIVE OFFICER: 

MAYOR: 

**AFTER EXECUTION, PLEASE RETURN ORIGINAL DOCUMENTS TO  
Terry McCarthy AND THIS FORM TOGETHER WITH A COPY OF THE  
DOCUMENT TO THE RECORDS SECTION.**



### 12.5 Proposed Lease of Premises at 18 Kent Street, East Victoria Park, to Victoria Park Carlisle Bowling Club Inc.

<b>File Reference:</b>	PR3351
<b>Appendices:</b>	No

<b>Date:</b>	24 September 2015
<b>Reporting Officer:</b>	T. McCarthy
<b>Responsible Officer:</b>	W. Bow
<b>Voting Requirement:</b>	Simple Majority

**Executive Summary:**

**Recommendation – Premises at 18 Kent Street, East Victoria Park, currently leased to Victoria Park Carlisle Bowling Club Inc. be leased to Victoria Park Carlisle Bowling Club Inc. for a term of five years with an option for a further five year term at the Lessor's option.**

- The Victoria Park Carlisle Bowling Club Inc. has occupied the property at 18 Kent Street for many years and wishes to secure a longer lease term for the property.
- A new draft lease has been prepared and is tabled.
- Recommended that Council enter into a five year lease with Victoria Park Carlisle Bowling Club Inc. with a five year option.

**TABLED ITEMS:**

- Draft lease document for the lease of Premises at 18 Kent Street, East Victoria Park, to Victoria Park Carlisle Bowling Club Inc. (the **Club**).
- Valuation dated 18 September 2014 of Bowling Club lease area premises at 18 Kent Street, East Victoria Park.
- Letter dated 1 September 2015 from the Club.
- Letter dated 13 September 2015 from the Club.

**BACKGROUND:**

The former Victoria Park Bowling Club was originally located in Rushton Street, at the site currently occupied by the Victoria Park Croquet Club. Between 1953 and 1960 the bowling club relocated to Kent Street facilities that were newly constructed at that time. In 2009-2010 the Victoria Park Bowling Club Inc merged with the Carlisle Lathlain Bowling Club Inc to form a new club, the Victoria Park Carlisle Bowling Club Inc. A new constitution for the Victoria Park Carlisle Bowling Club Inc. was drawn up and endorsed in 2011.

The Club's former lease of the premises expired on 30 June 2006 and it remained in occupation under the "holding over" clause of the expired lease. The Club requested a new lease over the premises and Council, at its Ordinary Meeting held 9 December 2014, resolved to lease the clubhouse premises and bowling greens to the Club for a term of two years with two x one year options in favour of the Lessee (the Club). The Club has recently requested that Council grant a five year lease with the option of a further five year term.

**DETAILS:**

The Club occupies an area of approximately 11,500m<sup>2</sup> at Kent Street, East Victoria Park, as depicted in the tabled draft lease document. The leased area is over several lots all owned in fee simple by the Town and all are zoned "Parks and Recreation" under the Town of Victoria Park Town Planning Scheme No. 1, excepting a 5.0m wide strip along the Kent Street boundary of each lot, which is zoned "Other Regional Roads" under the Metropolitan Region Scheme.

**Legal Compliance:**

The proposed lease of the premises to the Club would be an exempt disposition under Section 3.58 of the *Local Government Act 1995* and advertisement of the proposed lease is therefore not required.

**Policy Implications:**

Nil

**Strategic Plan Implications:**

At its Ordinary meeting held 10 February 2015, Council resolved:

1. *Receive the reprioritised recommendations from the Sport and Recreation Facilities Strategy as contained within the Appendices.*
2. *Engage a consultant, as a cost no greater than \$15,000 to undertake work on a Hockey Project Plan, being the first stage of a Feasibility Study and that a report comes back to the Ordinary Council Meeting on 12 May, 2015.*
3. *Request the Administration liaises with the City of South Perth and Department of Sport and Recreation to seek contributions to the cost incurred in engaging a consultant.*

Included within the Sport and Recreation Facilities Strategy received by Council is the following recommendation:

**HIGH PRIORITY - SHORT TERM (ORIGINAL):**

*Victoria Park Carlisle Bowls Club: Investigate amalgamation opportunities for the club with bowls clubs located in surrounding catchment (in particular South Perth and Como Bowling and Recreation Clubs who potentially lie within the amalgamation boundary identified for the Town of Victoria Park and South Perth)*

**HIGH PRIORITY – SHORT TERM (REVISED):**

*Pending outcome of Business Case for Town Centre redevelopment, which will determine the future of the piece of land where the club is located. Club is working to improve its short/medium term sustainability.*

**Financial Implications:**Internal Budget:

Revenue of \$6,000.00 plus GST (less expenses incurred) for a full financial year and increasing by 3% annually is proposed to be applied within the lease.



(To be confirmed 10 November 2015)

The table below provides indicative figures, based on a Gross Rental Value (GRV) of \$112,075 as to the value of the outgoings associated with 18 Kent Street –

OUTGOING	VALUE	PROPOSED TO BE ON-CHARGED
Council Rates	\$8,304.76	No
ESL	Unknown*	No
Water Rates	~\$500	Yes
Building Insurance	~\$300	Yes

\*The Town has not previously been charged ESL (Emergency Services Levy) on this property.

Total Asset Management:

A valuation carried out in September 2014 of the premises by a licensed valuer determined that the current market rental, excluding outgoings and GST, for the premises as \$60,000 per annum. In arriving at the rental valuation, the licensed valuer stated in the valuation report that in concluding his assessment he recognised:

- *"The quality and standard of amenity provided by the premises.*
- *The use of the premises.*
- *The bowling greens adjacent which are exclusively used."*

The building valuation carried out in June 2013 for asset management purposes by APV Valuers determined the Gross Current Replacement Cost of the main building at the premises as \$2,410,000 with a Reinstatement With New Value (for insurance purposes) of \$2,700,000.

In 2013 the fair value assigned to the buildings and land at 18 Kent Street was \$5,615,000.

**Sustainability Assessment:**

External Economic Implications:

Nil

Social Issues:

The Club is now the only bowling club within the Town and provides a valuable sporting and social function for the community to participate in.

Cultural Issues:

Nil

Environmental Issues:

Nil

**COMMENT:**

The Club has requested that a new five year lease with an option of a further five year term be granted. If the request is approved, the current lease would need to be determined. The motivation for the Club seeking a longer tenure is that they wish to enter

into an arrangement with a five a side soccer organisation to sub-lease one green to the five a side soccer organisation. The sub-lease would be subject to Council approval. The five a side soccer proposal would bring new activity to the Club, with the soccer players becoming members of the Club in order to enjoy the social facilities at the Club.

The five a side soccer organisation would make a significant capital investment in installing infrastructure at the Club, and would not make such a significant investment unless there is some certainty of tenure. A five year sub-lease is considered a minimum term of tenure, with an option for a further five year term.

Elected Members have previously been advised of the proposal to consider five a side soccer at the Club, and at its Ordinary Meeting held 14 July 2015, Council resolved:

*That Council:*

1. *Agrees in principle to establishing Area 5 Football within the Town of Victoria Park.*
2. *Requests the Chief Executive Officer to present a report on the financial and opportunity costs of co-locating Area 5 football at the Victoria Park Carlisle Bowling Club at 18 Kent Street, East Victoria Park and any future relocation cost and potential future development of the site or other site(s) within the Town that may necessitate the re-location of Area 5 Football assets to the August 2015 Elected Members Workshop.*

Elected Members were presented a memorandum in relation to the above matter on 1 September 2015. Pending the outcome of this matter pertaining to the lease, the Club will be encouraged to progress negotiations with Area 5 Football.

The proposed lease is for 5 years from 1 November 2015 to 31 October 2020, with an option for a further five year term at the Lessor's option. The terms of the proposed lease have been determined after consideration of:

- The rent that the Club has been hitherto paying;
- The term of the lease;
- The financial position of the Club;
- The aging facilities of the premises;
- The relevant recommendations made in the Sport and Recreation Facilities Strategy;
- The value of the premises as a facility for the community; and
- The rental valuation of the premises as determined by a licensed valuer.

The recommended rent is \$1,500.00 (excluding GST) per quarter payable in advance. The rental is to be increased on 1 July each year by 3%, compounding. This is the rental under the current lease executed in January 2015, and that rental rate would continue for the term of the lease if a new lease had not been requested and now considered.

A valuation carried out in September 2014 of the premises by a licensed valuer determined that the then current market rental, excluding outgoings and GST, for the premises as \$60,000 per annum.



(To be confirmed 10 November 2015)

Whilst the factors listed above as having been taken into consideration in determining a recommendation on the amount of rent to be paid are valid, and the current financial position of the Club is especially recognised, it also needs to be recognised that the Club for a number of years has been paying rent significantly below the current market rental valuation as determined by a licensed valuer.

Contained within the draft lease document is reference to the rental valuation carried out by the licensed valuer, wherein it is to be acknowledged by the Club that by setting the rent at an amount less than the rental valuation carried out by the licensed valuer, the Club acknowledges that the Town is, in effect, making an in-kind donation to the Club. The relevant Clause (4.1) of the draft Lease, states:

*"The Lessor has obtained a rental valuation of the Premises from a licensed valuer. The rental valuation has been assessed by the licensed valuer as \$60,000.00 (excluding GST) per annum as at 18 September 2014. In being a party to this agreement, the Lessee acknowledges that the Lessor is, at the commencement of the lease, foregoing a potential rental income of \$54,000.00 (excluding GST) per annum and is, in effect, making an in-kind donation to the Lessee of \$54,000.00 (excluding GST) per annum by way of foregone rent."*

Council, should it wish, can determine an amount of rent to be paid by the Club which may be at variance to the amount recommended. Whatever the amount of rent endorsed by Council, should it be lower than the rental valuation carried out by the licensed valuer, should not be considered as a precedent to be followed when leasing of other Council facilities comes under consideration. The current circumstances of the Club are unique and deserve consideration beyond usual parameters.

Council's attention is drawn to the recommendations contained in the Sport and Recreation Facilities Strategy which it received at the Ordinary Meeting held 13 December 2013, as referred to in the Strategic Plan Implications section of this report. It is considered appropriate that Council recognise those recommendations in determining the terms of the proposed lease to the Club.

Under the terms of the proposed lease, the tenant will be responsible for all outgoings (utilities, levies, rates and charges)

Historically, the Town has not applied the payment of rates to its Lessees. There is a general clause included in standard lease documents which states that the Town's Lessees are to "Duly and punctually to pay all rates, taxes, assessments, charges, impositions and outgoings of whatsoever nature payable or hereafter to be become payable to any Government, local government or other authority in respect of the Premises." This clause is included to cover the possibility that rates may be payable if demanded. Previous Councils have taken the view that rates ought not to be charged on Council owned properties leased to not-for-profit and community organisations. Given that some Leases are quite long in term, there is always the possibility that Council may wish to start imposing rates and the clause would allow that to happen. Given that most of the aforementioned groups are charged little or no rent, the amount of rates that would be recovered if they were to be imposed would be a small percentage of the foregone rent.



The Club has been charged, and has paid, water usage charges for 18 Kent Street. They have not been charged water service charges. The Club has been charged, and has paid building insurance premiums in the past. The Club was not charged rates, waste charges or the Emergency Services Levy (ESL) in the past.

The Town is not involved in the supply of gas, electricity and telephone/internet services to Lessees. The Club, and all other Lessees, are responsible for arranging with providers their own gas, electricity and telephone/internet services and are responsible for meeting all installation and usage costs involved.

**CONCLUSION:**

It is recommended that Council enter into a new lease agreement with the Club for a five year term with an option for a further five year term in favour of the Lessor.

*Cr Nairn left the Council Chambers at 7:40pm*

*The Director Future Life and Built Life Program, Ms Rochelle Lavery left the Council Chambers at 7:46pm*

**RESOLVED:**

**Moved: Cr Maxwell**

**Seconded: Cr Bissett**

**That:**

- 1. The Clubhouse Premises and Bowling Greens at 18 Kent Street, East Victoria Park, currently occupied by Victoria Park Carlisle Bowling Club Inc. be leased to Victoria Park Carlisle Bowling Club Inc. for a term of five (5) years commencing 1 November 2015 and concluding 31 October 2020, with a further five (5) year option in favour of the Lessor. The rent is to be \$1,500.00 (excluding GST) per quarter payable in advance. The rent is to be increased on 1 July each year by an amount of 3%.**
- 2. The lease document is to contain a redevelopment clause which would allow the Town to cancel the lease and issue six (6) months' notice to the Lessee to vacate the premises should it be necessary for the Town to have possession of the premises.**
- 3. The Mayor and the Chief Executive Officer be authorised to execute the lease document for the lease of the Clubhouse Premises and Bowling Greens at 18 Kent Street, East Victoria Park, to the Victoria Park Carlisle Bowling Club Inc.**
- 4. Any income derived from the lease of the Clubhouse Premises and Bowling Greens at 18 Kent Street, East Victoria Park, to the Victoria Park Carlisle Bowling Club Inc be placed in the Future Projects Reserve.**
- 5. The Town of Victoria Park and the Victoria Park Bowling Club Inc. by mutual agreement determine the current lease of the Clubhouse Premises and Bowling Greens at 18 Kent Street, East Victoria Park, prior to execution of the proposed new five (5) year lease.**



**The Motion was Put and**

**CARRIED (7-1)**

**In favour of the Motion: Mayor Vaughan; Cr Anderson; Cr Bissett; Cr Hayes; Cr Maxwell; Cr Oliver; Cr Potter and**

**Against the Motion: Cr Windram**

*Cr Nairn returned to the Councils Chambers at 7:50pm*

*The Director Future Life and Built Life Program, Ms Rochelle Lavery returned to the Council Chambers at 7:50pm*







SCANNED

TOWN OF VICTORIA PARK  
 PR3351  
 - 9 NOV 2015  
 RLP   
 CEO   
 HR   
 NE   
 RAN  PLN   
 EH  BLD   
 DOC No. DL5/58966

TOWN OF VICTORIA PARK

VICTORIA PARK - CARLISLE BOWLING CLUB INC.

\_\_\_\_\_

LEASE

PREMISES AT 18 KENT STREET, EAST VICTORIA PARK

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**THIS LEASE** is made on 1 November 2015.

**BETWEEN**

**TOWN OF VICTORIA PARK** of 99 Shepperton Road, Victoria Park, Western Australia ("**Lessor**")

**AND**

**VICTORIA PARK – CARLISLE BOWLING CLUB (Inc)** of 18 Kent Street, East Victoria Park, Western Australia, ("**Lessee**")

**RECITAL**

Subject to certain approvals and consents being obtained, the Lessor has agreed to lease the Premises to the Lessee and the Lessee has agreed to take the Premises on lease from the Lessor upon and subject to the provisions of this Lease.

**IT IS AGREED**

**1. INTERPRETATION**

**1.1 Definitions**

In this document:

**"Premises"** means the land described in item 1 of the Schedule together with all buildings and improvements on that land or after the signing of this Lease erected on that land and includes any part thereof as defined in the *Land Administration Act 1997* or portion of such a reserve which has been placed under the care, control and management of the Lessor pursuant to the *Land Administration Act 1997*.

**"Term"** means the term specified in item 4 of the Schedule and includes, if the Lessee exercises any option of renewal of this Lease granted to the Lessee pursuant to the provisions of **clause 3.2**, any further term.

**1.2 Definitions : GST**

In this document the expressions "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.



### 1.3 Construction

Unless expressed to the contrary:

- (a) words importing:
  - (i) the singular include the plural and vice versa;
  - (ii) any gender include the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, successors and assigns;
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) a right includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) provisions or terms of this document or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
  - (vii) time is to local time in Perth, Western Australia;
  - (viii) "\$" or "dollars" is a reference to the lawful currency of Australia;
  - (ix) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
  - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions.

### 1.4 Headings

Headings do not affect the interpretation of this document.

### 1.5 Exercise of Discretion

A power, authority, right or discretion conferred by this Lease may be exercised from time to time as the occasion requires.

### 1.6 Withholding of Consent or Approval

Where the consent or approval of a party to this Lease is required, that consent or approval must not be unreasonably or capriciously withheld.

## 2. CONDITIONS

### 2.1 Conditions

This document is subject to and conditional upon:

(a) the approval in writing specified in section 18 of the *Land Administration Act 1997*;

and

(b) any other necessary approvals and consents,

(if and to the extent that those approvals and consents are necessary and have not been obtained prior to the signing of this document) being obtained within three months after the signing of this document.

### 2.2 Application for Approvals and Consents

As soon as possible after the signing of this document the Lessor must, if the Lessor has not already done so, make application for the approvals and consents referred to in **clause 2.1** and must pursue those applications and the Lessee must promptly join in the applications as may be necessary.

### 2.3 Failure of Condition

If any approval or consent is refused or not obtained on or prior to the date specified in **clause 2.1** this document ceases to have effect and no party has any claim against any other party.

### 2.4 Approval or Consent Subject to Conditions

If any approval or consent is granted subject to any conditions with which either party is unable or reasonably unwilling to comply that party may give to the other a notice in writing that the condition is unacceptable and thereupon the approval or consent is deemed to have been refused and this document ceases to have effect and no party has any claim against any other party.



### 3. LEASE

#### 3.1 Initial Term

The Lessor leases the Premises to the Lessee and the Lessee takes the Premises on lease from the Lessor together with the rights specified in item 2 of the Schedule but subject to the reservations specified in item 3 of the Schedule for the term specified in item 4 of the Schedule at the rental specified in item 5 of the Schedule upon and subject to the provisions of this Lease.

#### 3.2 Option of Renewal

If at the date of exercise of the option in this **clause 3.2** contained the Lessee has not failed to comply with any notice given by the Lessor to the Lessee requiring the Lessee to remedy a breach by the Lessee of the provisions of this Lease on the Lessee's part to be complied with, the Lessor has the option of extending this Lease for the further term specified in item 6 of the Schedule if the Lessee makes a written request to the Lessor to extend the Lease not more than six (6) months nor less than three (3) months prior to the expiration of the term specified in item 4 of the Schedule at the same rental and upon the same provisions as are contained in this Lease except this **clause 3.2**.

### 4. LESSEE'S AGREEMENTS WITH LESSOR

The Lessee agrees with the Lessor as follows:

#### 4.1 Rent

To pay to the Lessor the rent in the manner specified in item 5 of the Schedule if and when demanded without any deduction or abatement whatsoever except if the Premises are destroyed or damaged as set out in **clause 7**. The Lessor has obtained a rental valuation of the Premises from a licensed valuer. The rental valuation has been assessed by the licensed valuer as \$60,000.00 per annum exclusive of outgoings and GST as at 18 September 2014. In being a party to this agreement, the Lessee acknowledges that the Lessor is, at the commencement of the lease, foregoing a potential rental income of \$54,000.00 per annum exclusive of outgoings and GST and is, in effect, making an in-kind donation to the Lessee of \$54,000.00 per annum exclusive of outgoings and GST by way of foregone rent.

#### 4.2 Outgoings

Duly and punctually to pay all rates, taxes, assessments, charges, impositions and outgoings of whatsoever nature payable or hereafter to be become payable to any Government, local government or other authority in respect of the Premises and the following applies:

- (a) the Lessee's liability in respect of all such rates, taxes, assessments, charges, impositions and outgoings commences on the date of commencement of the Term and ceases on the expiration of the Term and must be apportioned between the parties on each of those dates;



- (b) in the event that the Premises are not separately rated, charged or assessed in respect of any of the rates, taxes, assessments, charges, impositions and outgoings referred to in this **clause 4.2** then for the purposes of this **clause 4.2** they must be apportioned between the Premises and the other premises the subject of the assessment in proportion to their respective areas.

For the purpose of clarification, rates include local government annual rates and charges include Water Corporation supply and usage charges for provision of water supply, sewerage and drainage.

#### **4.3 Rubbish Charges**

Duly and punctually to pay all rubbish charges assessed on the Premises or the occupier of the Premises by the Lessor.

#### **4.4 Electricity, and Gas, Telephone and Water**

Duly and punctually to pay and discharge all charges and meter rents in respect of gas, electricity, water and telephone used, consumed or incurred on the Premises and if it is possible and reasonably practical to do so, to procure the issue of accounts in respect of such services to and in the name of the Lessee rather than to and in the name of the Lessor.

#### **4.5 Assignment, Subletting, Parting with Possession**

- (a) Not to assign, mortgage, charge, sublet or part with the possession of the Premises without the prior written consent of the Lessor which consents the Lessor may in the Lessor's absolute discretion refuse without assigning any reason and it is agreed that Sections 80 and 82 of the *Property Law Act 1969* are excluded from and do not apply to this Lease.
- (b) Not to assign, mortgage, charge, sub-let or part with the possession of the Premises without such prior approval in writing (if any) as is required pursuant to the *Land Administration Act 1997*.
- (c) Notwithstanding Clause 4.5(b), the Lessee is entitled, without requiring the approval of the Lessor, to hire the Premises on a casual or ongoing basis to community groups, schools, religious and other not for profit groups and is entitled to charge a hire fee to those groups provided always that, in the opinion of the Lessor, those hirers or users of the Premises do not receive advantage over other businesses or commercial enterprises, that the use does not cause annoyance or disturbance to nearby residents or business operators, and the use is in compliance with uses permitted on the Premises under the provisions of the Town of Victoria Park Town Planning Scheme No 1 or any subsequent Town Planning Scheme which may supersede that Town Planning Scheme.

#### **4.6 Statutory Obligations**

To comply with and obey the provisions of and all lawful and valid regulations, notices, orders and by-laws which may from time to time be made or given with



respect to or affecting the Premises or the use or occupancy of the Premises under the provisions of the *Health Act 1911*, the *Local Government Act 1995*, the *Metropolitan Water Supply Sewerage & Drainage Act 1909*, the *Fire Brigades Act 1942*, the *Bush Fires Act 1954*, the *Environmental Protection Act 1986* or any other statute, order, regulation, by-law or town planning scheme now or hereafter in force or made or given by any Minister, Department, Health Board, Municipal Council, Water Board or other competent authority or person.

The Lessor will ensure compliance of the Premises in respect to statutory obligations regarding the installation of emergency exit signage, fire alarm systems, smoke alarm systems and electrical residual current devices. Installation of the aforementioned systems and devices will be carried out by the Lessor. Maintenance and statutory certification inspection of the aforementioned systems and devices will be carried out by suitably qualified and experienced contractors appointed by the Lessor, and the cost of such maintenance and statutory certification inspection will be met by the Lessee. The Lessor may, at its sole and absolute discretion, choose to install a burglar alarm system at the Premises. If the Lessor chooses to install a burglar alarm system at the Premises, the Lessee agrees that the cost of any monitoring, call out fees and maintenance of the burglar alarm system will be met by the Lessee.

#### **4.7 Alterations**

Not without the prior written consent of the Lessor to:

- (a) erect or suffer to be erected any building or structure on the Premises or to make or suffer to be made any alteration in or to any building or structure erected on the Premises or cut, maim or injure or suffer to be cut, maimed or injured any of the walls or timbers of such building or structure; and
- (b) install any water, gas or electrical fixtures, equipment, appliance or apparatus for illuminating, air conditioning, heating, cooling or ventilating the Premises

and that if any buildings and improvements are to be constructed, erected or made or works carried out or executed on the Premises or any such installation is to be made by the Lessee after obtaining approval from the Lessor and any required planning approval or building permit, it is agreed that they must be constructed, erected, made, carried out and executed under the supervision and to the satisfaction of the Lessor and not otherwise.

#### **4.8 Cleaning, Maintenance and Repair**

To:

- (a) keep and maintain the Premises (including, without limitation, all electrical installations, all fences and gates and all reticulation and drainage systems) in good and tenable repair and condition, fair wear and tear excepted;
- (b) without limiting the generality of paragraph (a), keep and maintain all:
  - (i) windows and doors clean, operable and lockable;



- (ii) showers, sinks and basins clean and free from blockages; and
  - (iii) hot water services, airconditioning units and plant, fans and heaters clean and regularly maintained in accordance with the manufacturer's specifications and any relevant Australian standards. In respect to airconditioning units and plant, the Lessor will engage a qualified air conditioning plant contractor to carry out annual inspection and preventative maintenance treatment of the Premises for the maintenance of air conditioning units and plant, with the cost of such inspection and preventative maintenance treatment of airconditioning units and plant at the Premises being payable in full by the Lessee;
- (b) keep and maintain the Premises clean and tidy and free from dirt and rubbish;
  - (c) remove graffiti from any building on the Premises as soon as possible but in any event no later than 24 hours after the presence of that graffiti is identified;
  - (d) cut, water and maintain properly all lawns and hedges from time to time planted on the Premises and on the road verges immediately adjoining the Premises and to water and maintain properly all gardens, trees, shrubs and other flora from time to time laid out or planted on the Premises and on the road verges immediately adjoining the Premises and where necessary to replace all shrubs and plants that die or are destroyed. For the purpose of clarification, the Lessee will carry out maintenance of trees on the Premises where such maintenance can be done safely without use of an elevated working platform with the Lessee to dispose of the cuttings. Where major pruning or lopping of trees is required, necessitating use of a mechanical elevated working platform, the work will be carried out by the Lessor at the Lessor's expense provided that, in the opinion of the Lessor, such pruning or lopping is necessary;
  - (e) take all reasonable precautions to keep the Premises free of rodents, vermin, insects, and other pests and in the event of failing to do so must if so required by the Lessor but at the cost of the Lessee employ from time to time or periodically pest exterminators approved by the Lessor. The Lessor will liaise with the Lessee as to what methods to apply in keeping the Premises free of rodents, vermin, insects and other pests. The Lessor will engage a qualified termite treatment contractor to carry out annual inspection and preventative maintenance treatment of the Premises for the eradication of termites, with the cost of such inspection and preventative maintenance treatment of the Premises being payable in full by the Lessee; and
  - (f) repair any damage to the premises caused by malicious damage as a result of vandalism, burglary, wilful damage or any other malicious act or accidental occurrence.

#### 4.9 Painting

With the frequency specified in item 7 of the Schedule:



- (a) to paint with two (2) coats, undercoat and finishing coat, at least of first quality exterior paint and to oil with two (2) coats at least of first quality oil in a proper and workmanlike manner to the satisfaction of the Lessor all parts of the outside wood, iron, metal, stucco and cement work and all other external surfaces of all buildings on the Premises as are usually painted or oiled respectively; and
- (b) to paint or oil respectively with two (2) coats of interior paint or oil respectively in like manner all the internal wood and metal work and all other internal surfaces (including ceilings and walls) of such buildings and after every internal painting to grain, varnish, distemper, wash, stop, whiten and colour all parts as have previously been or are in the opinion of the Lessor required to be so dealt with first quality materials

but the Lessor may if in its opinion the condition of the buildings justify it relax these requirements as determined by it from time to time. The Lessee is required to obtain the written approval of the Lessor of the brand and type of paint to be used. Unless the colour of the paint to be used matches the existing colour of the object(s) to be painted, the Lessee is required to obtain the written approval of the Lessor as to the colour of the paint proposed to be used.

#### 4.10 Use

Not to:

- (a) use or to permit to be used the Premises for any purpose whatsoever other than for the purposes and objects for which the Premises is held by the Lessor and use of the Premises shall be in accordance and compliance with any Memorials, Caveats, Easements, Notifications or other similar documents registered on the Certificate of Title for the Premises;
- (b) use or permit to be used the Premises for any purpose other than that or those specified in item 8 of the Schedule;
- (c) carry on or suffer to be carried on upon the Premises any noxious noisome or offensive trade act business occupation or calling;
- (d) make, do or suffer upon the Premises any act, matter or thing that may be or become a nuisance or annoyance to the Lessor or to the owners or occupiers of property in the neighbourhood of the Premises;
- (e) permit persons to smoke cigarettes, or other products or materials similar to cigarettes, in any part of the Premises;
- (f) sell or dispense alcohol from the Premises or allow alcohol to be sold or dispensed from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Licensing Act 1988*;



- (g) cut down any trees, plants or shrubs or sell, remove or otherwise dispose of any clay, sand, gravel, timber or other materials from the Premises without the prior written approval of the Lessor;
- (h) store chemicals, inflammable liquids, acetylene gas or volatile or explosive oils, compounds or substances upon the Premises other than motor fuels, fertilisers and gas cylinders (which must be stored separately from each other and in compliance with all relevant safety procedures) and other substances reasonably required for conducting the normal activities of the Lessee which are permitted pursuant to **clause 4.10(b)**;
- (i) permit any person to sleep on the Premises; or
- (j) use or permit or suffer to be used any lavatories, toilets, sinks and drainage and other plumbing facilities in the Premises for any purposes other than those for which they were constructed or provided or deposit or permit to be deposited therein any sweepings, rubbish or other matter and any damage thereto arising caused by misuse shall be made good by the Lessee forthwith and all damages occasioned thereby shall also be paid by the Lessee.

#### **4.11 Signs**

Not to affix or exhibit or permit to be affixed or exhibited to or upon the Premises any placard, poster, sign, board or other advertisement without the prior written consent of the Lessor, and if such consent is given, to keep and maintain any such sign or advertisement in good and tenable repair and condition.

#### **4.12 Report Acts of Vandalism**

To immediately report to the Lessor any acts of vandalism or any incident which occurs on or adjacent to the Premises which is or is likely to involve a breach of the peace or become the subject of a report to the police. Any damage to the Premises which occurs as a result of accidental damage, vandalism, burglary, wilful damage or any other malicious act or accidental occurrence, is to be repaired and made good by the Lessee at the Lessee's cost. Failure to repair and make good and damage to the Premises which occurs as a result of accidental damage, vandalism, burglary, wilful damage or any other malicious act or accidental occurrence, after service of written notice by the Lessor specifying a date by which such repair and making good is to be carried out, will entitle the Lessor to carry out the repair and making good and to recover the cost of so doing from the Lessee.

#### **4.13 Insurance**

To take out and keep in force the following policies of insurance in accordance with the *Insurance Act 1973 (Cth)*:

- (a) a public liability insurance policy naming the Lessee as the insured for an amount which at the commencement of the Term must not be less than the sum of TEN MILLION DOLLARS (\$10,000,000.00);



- (b) the usual workers' compensation policy covering all employees of the Lessee; and
- (c) such policies of insurance as are specified in item 9 of the Schedule

and to deposit each such policy of insurance with the Lessor and at least seven (7) days before they become due to pay all premiums necessary for that purpose and deposit with the Lessor the receipt for the current year's premium or a certificate of renewal of the insurance company and if the Lessee at any time fails to insure and keep insured as above it is agreed the Lessor may do all things necessary to effect or maintain the insurance and that the Lessee must repay any moneys expended by the Lessor for that purpose on demand and any moneys so expended are deemed to be rent in arrears and may be recovered by the Lessor accordingly.

#### **4.14 Insurance Premium: Lessor's Insurance**

To pay to the Lessor upon demand:

- (a) such proportion of the insurance premium paid by the Lessor in taking out and keeping in force policies of building insurance covering loss of or damage to the buildings within the Premises as the value of the Premises bears to the total value of the premises the subject of such policies of insurance, such values to be determined by the Lessor in its absolute discretion; and
- (b) any excess payable in respect of any claim made on any such policy of insurance.

#### **4.15 Lessor's Rights of Entry**

- (a) To permit:
  - (i) the Lessor, any employee of the Lessor and any other person authorised by the Lessor at all reasonable times, after the giving of at least 24 hours notice to the Lessee except in the case of emergency, to enter upon the Premises and view the condition of the Premises and upon notice being given by the Lessor, to repair the Premises in accordance with such requirements as are set out in any such notice;
  - (ii) the Lessor, any employee of the Lessor and any other person authorised by the Lessor, after the giving of at least 24 hours notice to the Lessee except in the case of emergency, with all necessary vehicles plant and materials at all times to have access to the Premises and the right to remain on the Premises to carry out any building, alterations, improvements or works whether structural or otherwise which the Lessor desires or is required to effect upon the Premises.
- (b) The Lessor must at its cost make good any damage to the Premises (or Lessee's property kept or stored at the Premises in accordance with item 8 of the Schedule) in carrying out any works under clause 4.15(a).



#### 4.16 Costs

To pay:

- (a) all costs of and incidental to the preparation, execution and stamping of this Lease; and
- (b) all costs, charges and expenses (including solicitors' costs and architects' fees) incurred by the Lessor for the purposes of or incidental to the preparation and service of a notice under Section 81 of the *Property Law Act 1969*, requiring the Lessee to remedy a breach of any provision of this Lease notwithstanding forfeiture for the breach is avoided otherwise than by relief granted by the Court.

#### 4.17 Indemnity

- (a) To the extent that the terms and conditions of any insurance effected by the Lessor or any money paid to the Lessor out of insurance effected by the Lessee do not fully indemnify the Lessor against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor becomes liable in respect of any of the matters referred to in sub-paragraphs (i) and (ii) of this **clause 4.17(a)**, to indemnify and keep indemnified the Lessor against all actions, claims, demands, notices, losses, damages, costs and expenses for which the Lessor becomes liable in respect of any loss or damage to property or death or injury of whatever nature or kind and however and wherever sustained:
  - (i) caused or contributed to by the Lessee's use or occupation of the Premises except to the extent that the same is caused or contributed to by the negligence, act, default or omission of the Lessor its employees, agents or contractors; or
  - (ii) resulting from any notice, claim or demand to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease except to the extent that the Lessor is obliged under the provisions of this Lease to pay for or contribute to that cost.
- (b) Without limiting the generality of **clause 4.17(a)**, to indemnify and keep indemnified the Lessor against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor becomes liable in respect of or arising from the overflow or leakage of water or other fluids in or from the Premises except to the extent that the same is caused or contributed to by the negligence, act, default or omission of the Lessor.
- (c) Without limiting the generality of **clauses 4.17(a) and 4.17(b)**, to indemnify and keep indemnified the Lessor against any claim, action, demand, fine, damage, costs or expenses arising out of any breach by the Lessee or its servants, agents, contractors, customers, invitees of any provision of the *Occupational Health, Safety and Welfare Act 1984*.



#### 4.18 Restore Premises

Upon the expiration or sooner determination of the Term to remove all fixtures and fittings of the Lessee from the Premises and to make good any damage caused by such removal and in particular but without limiting the generality of the above to remove or paint over, as the case may require, any sign, placard or advertisement affixed or exhibited in to or upon the Premises by the Lessee.

#### 4.19 Deliver up Premises

Upon the expiration or sooner determination of the Term to deliver up the Premises and all additions to the Premises and fixtures and fittings in the Premises and the keys of the Premises (if any) to the Lessor in good and tenable repair order and condition in strict accordance with the Lessee's obligations under this Lease.

#### 4.20 Use of Premises in a Declared Emergency

That in the event of a Declared Emergency, as defined under Section 56 of the *Emergency Management Act 2005*, occurring in or nearby the Town, the Premises will be made available by the Lessee to the State Emergency Services, or similar authority formed within Western Australia and approved by the State Fire and Emergency Services Authority or the Minister for Fire and Emergency Services, or to the Lessor, for the purpose of temporary accommodation for persons evacuated from their homes as a result of a major emergency or disaster. The term of the temporary accommodation will be at the discretion of the relevant State emergency authority. The Lessor will repair any damage to the Premises caused as a result of temporary accommodation in a Declared Emergency. No compensation will be payable to the Lessee for any loss incurred as a result of the Premises being used for temporary accommodation in a Declared Emergency.

### 5. LESSOR'S AGREEMENTS WITH LESSEE

The Lessor agrees with the Lessee as follows:

#### 5.1 Quiet Enjoyment

If the Lessee pays the Rent and observes and performs the provisions of this Lease on the part of the Lessee to be observed and performed, the Lessee is, subject to **clause 4.15** and **Clause 11.9**, entitled to peaceably hold and enjoy the Premises during the Term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

#### 5.2 Insurance

To take out and keep in force such policies of insurance as are specified in item 10 of the Schedule.

## 6. DEFAULT

The Lessor and the Lessee agree as follows:

### 6.1 Default: Essential Terms

Each of the obligations of the Lessee set out in **clauses 4.1** (payment of rent) **4.2** (payment of outgoings), **4.5** (assignment, sub-letting and parting with possession), **4.8** (cleaning, maintenance and repair), **4.10** (use of the Premises), **4.13** (the Lessee's insurances) and **4.17** (indemnity) of this Lease is an essential term of this Lease.

### 6.2 Default

If:

- (a) any rent or any other moneys payable under this Lease remain unpaid for fourteen (14) days after written demand has been received by the Lessee from the Lessor; or
- (b) an order is made or a resolution is effectively passed for the winding up of the Lessee (other than for the purpose of amalgamation or reconstruction) or the Lessee becomes bankrupt or if any deed of assignment or deed of arrangement is prepared by or for or presented to the Lessee for execution by it or there is appointed under any Act or instrument or by order of any Court a manager or an administrator or a trustee or a receiver or a receiver and manager or liquidator in relation to any part of the Lessee's undertakings or assets or property; or
- (c) the Lessee fails within the time specified in a notice (which time shall be not less than fourteen (14) days) requiring the Lessee to remedy a breach by the Lessee of any one or more of the provisions of this Lease unless the non-performance or non-observance has been waived or excused by the Lessor in writing; or
- (d) the Premises are deserted or vacated,

then and in each case the Lessor or any person or persons duly authorised by the Lessor at any time thereafter and without any notice or demand may re-enter into and upon the Premises and repossess the Premises and thereby the Term and the estate and interest of the Lessee in the Premises will immediately determine.

The Lessor's right of action referred to above is without prejudice to the right of action or other remedy which the Lessor has in respect of any prior breach by the Lessee of any provision of this Lease and following such forfeiture the Lessor is entitled to recover from the Lessee damages for loss of the benefits which performance of the provisions of this Lease by the Lessee would have conferred on the Lessor between the date of forfeiture and the expiry of this Lease by the effluxion of time.



### 6.3 Execution of Works by Lessor

If and whenever the Lessee fails within the time specified in a notice issued pursuant to **clause 6.2(c)** to remedy a breach of a provision of this Lease, the Lessor may (without prejudice to any other rights or remedies of the Lessor) enter upon the Premises, carry out or execute any repairs, requisitions, notices or works, remedy any default, pay or discharge any outgoings or other moneys or do any act, matter or thing the Lessor thinks necessary or desirable to ensure or secure compliance with the provisions of this Lease and the Lessee must repay any moneys expended by the Lessor for that purpose on demand and any moneys so expended are deemed to be rent in arrears and may be recovered by the Lessor accordingly.

### 6.4 Interest on Overdue Money

Without affecting the rights, powers and remedies of the Lessor under this Lease, the Lessee agrees to pay to the Lessor on demand interest on any money due by the Lessee to the Lessor pursuant to this Lease but unpaid for fourteen (14) days calculated from the due date for payment until payment in full and computed at the rate per cent per annum which is from time to time 2% above the prime rate of interest (expressed as a rate per cent per annum) charged by the Lessor's bankers on loans of less than \$100,000.00 from time to time and such interest is deemed to be rent in arrears and may be recovered by the Lessor accordingly.

### 6.5 Acceptance of Rent Not to Prejudice Lessor's Right

Demand for or acceptance of rent or any other amounts payable by the Lessee in terms of this Lease after default by the Lessee under this Lease (other than on the grounds of non-payment of that rent or the other amounts as the case may be) will not affect the exercise by the Lessor of the rights and powers conferred upon the Lessor by this Lease and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

## 7. DAMAGE OR DESTRUCTION

### 7.1 Damage or Destruction

- (a) Subject to the provisions of **clause 7.2** if the Premises are at any time during the Term totally or partially destroyed or damaged so as to render the Premises unfit for the occupation and use of the Lessee or inaccessible, the rent and any other moneys payable by the Lessee under the terms of this Lease ("**Amounts Payable**") or a proportionate part of the Amounts Payable according to the nature and extent of the damage sustained shall abate and all or any remedies for recovery of the Amounts Payable falling due after the destruction or damage or a proportionate part of the Amounts Payable shall be suspended until the Premises have been rebuilt or made fit for the occupation and use of the Lessee or accessible to the Lessee as the case may be.
- (b) The abatement of the Amounts Payable referred to above shall not apply in case of destruction or damage caused by the Lessee or if any policy or policies



of insurance have been vitiated or payment of the policy moneys refused because of the act, default or omission of the Lessee or of any servant, agent, invitee or licensee of the Lessee.

- (c) If there is any dispute between the parties concerning the interpretation of this **clause 7.1** that dispute must be referred to the award of a single arbitrator (who must conduct the arbitration in accordance with the provisions of the *Commercial Arbitration Act 1985*) to be appointed in default of agreement between the parties by the President for the time being of the Australian Property Institute (Inc.) WA Division, at the request of either the Lessor or the Lessee, whose appointment is final and the Lessee must pay the Amounts Payable without any deduction or abatement until the date of the award of the arbitrator whereupon the Lessor must refund any of the Amounts Payable which according to the award has been overpaid. Each party is entitled to legal representation at any such arbitration.

## 7.2 Total Damage or Destruction

If the Premises are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for occupation and use either party may by notice in writing to the other of them given within twenty eight (28) days after the event determine this Lease and thereupon this Lease is determined without prejudice however to the liability of the Lessee under this Lease up to the date of determination.

## 8. GST

- (a) Unless otherwise expressly stated, all rent, prices or other sums payable or consideration to be provided under or in accordance with this document are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this document, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document.
- (c) If this document requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("**reimbursable expense**") suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
- (i) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense ("**net amount**"); and
  - (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.



- (d) If a GST inclusive price is charged, the supplier must provide the recipient of the supply a valid tax invoice at or before the time of payment.

## 9. LIMITATION OF LIABILITY OF LESSOR

The Lessor's obligations under this document:

- (a) bind only the person holding the reversionary estate of the Premises immediately expectant upon the expiry of the Term; and
- (b) only render the Lessor liable in damages when the act omission or default giving rise to damages occurs while the Lessor is the registered proprietor of the Premises or while the Premises are vested in the Lessor (as the cause may be).

## 10. SPECIAL CONDITIONS

The Lessor and the Lessee agree that the special conditions (if any) set out in item 12 of the Schedule shall apply and agree with each other to observe and perform the obligations on the part of each of them set out in item 12 of the Schedule.

## 11. MISCELLANEOUS PROVISIONS

The Lessor and the Lessee agree that:

### 11.1 Notices

Any notice to be given pursuant to this Lease is deemed to have been duly served on the party to whom it is to be given if served in the manner provided in Section 135 of the *Property Law Act 1969* and, in addition, in the case of a notice to the Lessee if left addressed to the Lessee at the postal address of the Lessee as provided by the Lessee.

### 11.2 Holding Over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor the Lessee will be a monthly tenant of the Lessor at a monthly rent equivalent to one twelfth of the aggregate of the rent payable upon the expiry of the Term which would be payable by the Lessee if an extension of the Term had been granted at the expiry of the Term and otherwise on the same terms and conditions as this Lease (except **clause 3.2**).

### 11.3 Waiver

No waiver by the Lessor of any breach of any provision of this Lease by the Lessee operates as a waiver of another breach of any provision of this Lease by the Lessee.

#### 11.4 Severance

If any part of this Lease is or becomes void or unenforceable then that part is or will be severed from this Lease so that all parts not void or unenforceable remain in full force and effect and unaffected by that severance.

#### 11.5 Statutory Powers

The powers conferred by or under any statute except to the extent inconsistent with the terms and provisions expressed in this Lease) are in augmentation of the powers conferred on the Lessor by this Lease.

#### 11.6 Governing Law and Jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws in force in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

#### 11.7 Joint and Several Liability

An obligation of two or more persons binds them jointly and severally.

#### 11.8 Time of the Essence

Time is of the essence in respect of the performance and observance by the Lessee of the provisions of this Lease.

#### 11.9 Redevelopment of Premises

The Lessor and the Lessee agree that notwithstanding anything to the contrary contained or implied in this Lease;

- (a) If at any time during the continuance of the Lease the Lessor desires to repair, alter, remove, reconstruct, develop or improve any part of the Premises (redevelopment) or alternatively carry out works which will prevent access or safe access to the Premises then, notwithstanding the fixed Terms of the Lease, the Lessor may at any time terminate the Lease and the term upon giving the Lessee not less than six (6) calendar months' notice in writing which notice shall state the date on which the Lease and the Term is to terminate and upon such date (**the Date of Termination**) the Lease and the Term and any right of extension of the Term shall absolutely cease and determine and the Lessee shall vacate, surrender and deliver up possession of the Premises to the Lessor. The said notice may be given at any time and expire on any date notwithstanding that such date may not correspond with a rent day or any other periodic day. After the Date of Termination the Lessee shall not be liable to the Lessor save as to any rights which may have accrued to the Lessor up to



the Date of Termination AND PROVIDED THAT nothing herein contained shall affect any obligation of the Lessee to pay any of the rent or other monies for which the Lessee is liable under the Lease PROVIDED FURTHER THAT no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of such early termination.

- (b) A certificate signed by the Lessor shall be full and sufficient evidence of the fact that the Lessor desires to repair, alter, remove, reconstruct, redevelop or improve any part of the Premises.

## SCHEDULE

### 1. Premises (Clauses 1.1 and 3.1) (Annexure 1)

An area of approximately 11,400m<sup>2</sup> comprised of portions of the land listed hereunder, known as 18 Kent Street, East Victoria Park, and being the land comprised in the following Certificates of Title:

- (i) Portions of Canning Location 2 the subject of Diagram 11996 and being the whole of the land comprised in Certificate of Title Volume 1077 Folio 393.
- (ii) Portions of Canning Location 2 and being part of Lot 6 on Plan 3844 and being part of the land comprised in Certificate of Title Volume 815 Folio 109.
- (iii) Portions of Canning Location 2 the subject of Diagram 17390 and being the whole of the land comprised in Certificate of Title Volume 1172 Folio 325.
- (iv) Portions of Canning Location 2 numbered 16 to 21 inclusive being part of the land comprised in Certificate of Title Volume 24 Folio 363.

### 2. Rights (Clause 3.1)

The Lessee has the right to use the public parking bays in the public car park and public roads adjoining the Premises, subject to the same conditions of use of the public parking bays in the public car park and public roads adjoining the Premises applicable to members of the public using those areas. The Lessee does not have any right to privileged use of the public parking bays in the public car park and public roads adjoining the Premises, and cannot reserve the public parking bays in the public car park and public roads adjoining the Premises for its exclusive use.

### 3. Reservations (Clause 3.1)

Not applicable.

### 4. Term (Clause 3.1)

Five (5) years, commencing 01 November 2015 expiring 31 October 2020.

### 5. Rent (Clauses 3.1 and 4.1)

The rental for the first year of the term is \$6,000.00 exclusive of outgoings and GST payable quarterly in advance by instalments of \$1,500.00 exclusive of outgoings and GST on the first day of January, April, July and October each year.

The rental is to be increased on 1 July 2016 by an amount of three per centum (3%) per annum, and on 1 July each year thereafter for the term of the lease and any term of extension and any holding over occupancy under Clause 11.2 of this Lease by an amount of three per centum (3%) per annum.



6. **Further Term(s)** (Clause 3.2)

At the option of the Lessor, five (5) years commencing 01 November 2020 and expiring 31 October 2025.

7. **Painting** (Clause 4.9)

To be carried out within one (1) year after the commencement of the Lease and thereafter at least once every seven (7) years during the term of the Lease and any extension of the term of the Lease or holding over occupancy under Clause 11.2 of this Lease.

8. **Purpose for which Leased Premises to be Used** (Clause 4.10(b))

The Premises are to be used only for Victoria Park – Carlisle Bowling Club purposes only, and any activity reasonably associated with Victoria Park – Carlisle Bowling Club purposes. The Premises are not to be used for any business, commercial, illegal or immoral purposes.

9. **Lessee's Additional Insurance Obligations** (Clause 4.13(c))

None.

The Lessee is advised that the Lessor's Insurance Obligations (Clause 5.2) do not extend to coverage of items owned by the Lessee. The Lessee is advised to take out insurance to cover contents of the Premises owned by the Lessee.

10. **Lessor's Insurance Obligations** (Clause 5.2)

A building and industrial special risk policy to cover the Premises and all plate glass installed on the Premises against loss or damage by fire, fusion, explosion, smoke, lightning, flood, storm, tempest, rain, water damage, leakage, earthquake, riot, civil commotion, malicious damage, impact by vehicles, aircraft and articles dropped therefrom and any other risks required by the Lessor, such cover not to be less than the full insurable value of the Premises and plate glass on a replacement and/or reinstatement basis.

11. **Redevelopment of Premises** (Clause 11.9)

The Lessee acknowledges and accepts the contents of Clause 11.9.

## 12. Special Conditions (Clause 10)

### 12.1 Grounds Maintenance Covenant

The Lessee agrees that it will at all times maintain:

- (i) All bowling greens, lawns and gardens (including without limitation all plants and hedges) adequately and properly watered, fertilised, tended and cared for;
- (ii) All fences in good order and repair and in a safe and functional condition;
- (iii) All parking areas, pathways, steps and ramps safely and properly surfaced and illuminated and free and clear of hazards;
- (iv) All direction and information signs, speed limit and other notices in all necessary positions clearly marked and in good order;
- (v) All pumps, pressure unit sand equipment used in connection with or ancillary to any sewerage apparatus or any bore or other water supply source in sound and functional order and condition; and
- (vi) As frequently as necessary in the interests of health and hygiene, but in any event no less frequently than required from time to time by the Lessor's Environmental Health Officer, remove rubbish and litter from all parts of the Premises to such authorised rubbish deposit site as the Lessor shall authorise, to the satisfaction of the Lessor.

### 12.2 Compliance with Direction

The Lessee shall comply with any reasonable directions given in writing by the Director Renew Life Program, acting on behalf of the Lessor, relating to the maintenance and upkeep of all bowling greens, lawns and gardens within the Premises, including without limitation all plants, trees and hedges. In this clause the Director Renew Life Program means the Director Renew Life program for the time being of the Lessor and includes any officer or contractor of the Lessor for the time being acting in the role of Director Renew Life program or any officer or contractor of the Lessor authorised to issue instructions or correspondence on behalf of the Director Renew Life Program.

### 12.3 Appointment of Lessor as Agent

The Lessee hereby irrevocably appoints the Lessor as its agent during the term, and any term of extension of this lease, to perform any of the items described in this Special Condition 12 and Clauses 4.1 to 4.20 inclusive of the Lease which have not been carried out by the Lessee in accordance with the terms of this Lease, and the Lessee agrees that the Lessor, in so carrying out as agent any of the specified items, may recover from the Lessee the full cost of doing so.



EXECUTED as a deed.

THE COMMON SEAL of )  
TOWN OF VICTORIA PARK )  
was hereunto affixed by authority of a )  
resolution of the Council in the presence of: )



*T. Vaughan*  
..... Mayor  
Trevor Stephen Vaughan

..... Name of Mayor  
(print)

*[Signature]*  
..... Chief Executive Officer

*ANTHONY VULETA*  
..... Name of Chief Executive Officer  
(print)

THE COMMON SEAL of )  
VICTORIA PARK - CARLISLE )  
BOWLING CLUB INC. )  
was hereunto affixed by authority )  
of a resolution of the Committee of the )  
said Club by and in the presence of: )



*[Signature]*  
..... President

*[Signature]*  
..... Vice President

*MERYL BOLTON*  
..... Name of President (print)

*NOEL STAUDE*  
..... Name of Vice President (print)

*[Signature]*  
..... Secretary

*CAROL LEE*  
..... Name of Secretary (print)

ANNEXURE 1

AERIAL PHOTOGRAPH PLAN OF LEASE AREA







IRDI LEGAL



## **Extension of Lease**

**18 Kent Street, East Victoria Park**

Town of Victoria Park  
(Landlord)

Victoria Park Carlisle Bowling Club Inc  
(Tenant)

Our Ref: API:20210829  
(#3272530v2)



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## Extension of Lease

### Date

25<sup>TH</sup> NOVEMBER 2020

### Parties

Town of Victoria Park of 99 Shepperton Road, Victoria Park WA 6100 (Landlord)

Victoria Park Carlisle Bowling Club Inc Registration No. A0510026C of 18 Kent Street, East Victoria Park (Tenant)

### Background

- A. The Landlord leased the Premises to the Tenant under the Lease.
- B. The Landlord has agreed to extend the Lease for the Further Term as set out in this deed.

### The parties agree

## 1 Definitions and Interpretation

### 1.1 Definitions

In this deed:

- (a) **Authority** means any body or corporation or any municipal, government, statutory or non-statutory authority or body having authority or jurisdiction over the Land or the Premises or to whose systems the Premises is connected at any time;
- (b) **Further Term** means the term created by this deed as specified in Item 4(b);
- (c) **Item** means unless the context otherwise permits, an item in the Schedule;
- (d) **Land** means the land (incorporating the Premises) described in Item 2;
- (e) **Landlord** means the Landlord described above and its successors and assigns and includes the registered proprietor entitled to possession of the Premises at the end of the Further Term;
- (f) **Landlord's Covenants** means the covenants and obligations to be observed and performed by the Landlord under the Lease and this deed;
- (g) **Landgate** means the Western Australian Land Information Authority as established under section 5 of the *Land Information Authority Act 2006* (WA);
- (h) **Lease** means the lease described in Item 3(a) as assigned, extended and varied from time to time, including by the documents (if any) described in Item 3(b);
- (i) **Outgoings** means all money (other than Rent) that is payable by the tenant under the Lease, including outgoings, operating expenses and rates and taxes;
- (j) **Premises** means the premises described in Item 1;



- (k) **Rent** means the rent payable by the Tenant under the Lease;
- (l) **Schedule** means unless the context otherwise permits, the schedule to this deed;
- (m) **Tenant's Covenants** means the covenants and obligations to be observed and performed by the Tenant under the Lease and this deed; and
- (n) **Term** means the term of the Lease as extended or renewed (including for the terms specified in Item 4).

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and clause numbers are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) a reference to a person includes a corporation and any entity capable of being the subject of legal proceedings;
- (e) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (f) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (g) if a word or phrase is defined in this deed, its other grammatical forms have a corresponding meaning;
- (h) 'including' and similar expressions are not words of limitation;
- (i) a reference to a party to this deed includes the party's successors, permitted substitutes and permitted assigns and, where applicable, the party's legal personal representatives; and
- (j) a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, on each of them severally and on any two or more of them jointly.

## 2 Extension of Lease

### 2.1 New Lease for Further Term

- (a) The Landlord grants a new lease of the Premises to the Tenant for the Further Term and on the terms and conditions of the Lease, as extended and varied by this deed.
- (b) The Tenant accepts that new lease.

### 2.2 Lease Provisions

The terms of this deed prevail if and to the extent that they are inconsistent with the terms of the Lease.

### 2.3 Parties' Covenants

- (a) The Landlord must at all times during the Further Term observe and perform the Landlord's Covenants.

- (b) The Tenant must at all times during the Further Term observe and perform the Tenant's Covenants.

### **3 Payment of Money**

#### **3.1 Rent**

- (a) The Tenant must pay all Rent in accordance with, and at the times required by, the Lease and this deed.
- (b) The Rent must be paid, and will be reviewed, at the times and in the manner specified in Item 5.

#### **3.2 Outgoings**

The Tenant must pay all Outgoings in accordance with, and at the times required by, the Lease and this deed.

### **4 Variation of Lease**

The Lease is varied:

- (a) to exclude any provision relating to this renewal for the Further Term contained in the Lease; and
- (b) to the extent necessary to make the Lease consistent with this deed.

### **5 Special Conditions**

The Parties agree that they will be bound by any special conditions set out in Item 6, which will prevail to the extent of any inconsistency with the main body of this deed or the Lease.

### **6 Costs**

- (a) The Tenant must pay, on demand, the Landlord's reasonable legal and other costs and expenses of and incidental to:
- (i) negotiating, preparing, and signing this deed; and
  - (ii) obtaining the consent of any mortgagee or other person to this deed (whether or not that consent is granted).
- (b) Except as expressly stated otherwise in this deed, each party other than the Landlord must pay its own legal and other costs and expenses relating to negotiating, preparing and signing this deed and complying with its obligations under it.

### **7 General**

#### **7.1 Further Assurances**

The Tenant, the Guarantor and every other person rightfully claiming through them any interest in the Premises and/or the Lease must, at the request and expense of the Tenant, execute and do all things necessary to give effect to this deed.



**7.2 Indemnities**

Each indemnity in this deed is a continuing obligation, independent of the other obligations of the Tenant or the Guarantor (as the case requires), and survives the end of the Lease.

**7.3 Counterparts**

This deed may be executed in any number of identical counterparts. All executed counterparts together will be taken to constitute one instrument.

**7.4 Governing Law**

This deed will be construed in accordance with and governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts.

**Schedule****1 The Premises (clause 1.1(j))**

18 Kent Street, East Victoria Park being more particularly described in the Lease.

**2 The Land (clause 1.1(d))**

- (a) Lot 50 on Diagram 11996 being the whole of the land in Certificate of Title Volume 1077 Folio 393;
- (b) Lot 6 on Plan 3844 being the whole of the land in Certificate of Title Volume 815 Folio 109;
- (c) Lot 51 on Diagram 17390 being the whole of the land in Certificate of Title Volume 1172 Folio 325; and
- (d) Part of Lot 16 on Plan 3844 being part of the land in Certificate of Title Volume 34 Folio 363.

**3 Lease (clause 1.1(h))**

- (a) **Lease document**  
A Lease dated 1 November 2015 made between the Landlord (as landlord) and the Tenant (as tenant).
- (b) **Documents assigning, extending and varying the Lease**  
Not any.

**4 Term (clause 1.1(n))**

- (a) **Current Term**  
5 years having commenced on 1 November 2015 and terminating on 31 October 2020.
- (b) **Further Term (clause 1.1(b))**  
5 years commencing on 1 November 2020 and terminating on 31 October 2025.
- (c) **Remaining Option Term(s)**  
Not any.

**5 Rent (clause 3.1)**

- (a) **Rent at the commencement of the Further Term (1 November 2020)**  
\$6,753.05 per annum plus GST payable quarterly in advance by instalments of \$1,688.26 plus GST on the first day of January, April, July and October each year
- (b) **Rent at 1 July 2021**  
\$6,955.65 per annum plus GST payable quarterly in advance by instalments of \$1,738.91 plus GST on the first day of January, April, July and October each year.
- (c) **Subsequent Rent Reviews**  
The Rent is to be increased on 1 July 2022 by an amount of three per centum (3%) per annum, and on 1 July each year thereafter during the Term, including any holding over period by an amount of three per centum (3%) per annum.





**6 Special Conditions (clause 5)**

**6.1 Car Bays**

Subject to the terms and conditions in Item 2 of the Schedule to the original Lease, the Tenant may continue to use the public parking bays in the public car park and public roads adjoining the Premises, during the Further Term.

**6.2 Redevelopment**

The parties acknowledge and agree that clause 11.9 of the original Lease will apply during the Further Term with any necessary modification to suit the lease granted by this deed for the Further Term.

Executed by the parties as a deed.

The Landlord:

The Common Seal of Town of Victoria Park was hereunto affixed by authority of a resolution of the Council in the presence of:



*Karen Ann Vernon*

Mayor

Karen Ann Vernon

Name of Mayor

*Anthony John Vuleta*

Chief Executive Officer

Anthony John Vuleta

Name of Chief Executive Officer

The Common Seal of Victoria Park Carlisle Bowling Club Inc Registration No. A0510026C was hereunto affixed by authority of a resolution of the Committee of the Club in the presence of:



*Henry Lim*

President

HENRY LIM

Name of President

*Phil Long*

Vice President

PHIL LONG

Name of Vice President

*Carol Lee*

Secretary

CAROL LEE

Name of Secretary



Executed by the parties as a deed.

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CAROL LEE

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