

TOWN OF VICTORIA PARK

File No. PR 3354

Xref No. _____

BLP

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RAT

19 JUL 2022

RAN

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DOC No. _____

THOMSON GEER

RLP

CEO

HR

NE

LAWYERS

Level 27, Exchange Tower
2 The Esplanade
Perth WA 6000 Australia

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Sublease

Part of 18 Kent Street, East Victoria Park

between

Victoria Park Carlisle Bowling Club Inc.
ABN 93 370 820 883
(Lessor)

and

The Vic. Park Collective Inc
ABN 66 878 966 297
(Lessee)

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This lease is made on the day last mentioned on page 10.

between **Victoria Park Carlisle Bowling Club Inc.** ABN 93 370 820 883 of 18 Kent Street, East Victoria Park, Western Australia, 6101 (**Lessor**)

and **The Vic. Park Collective Inc** ABN 66 878 966 297 of PO Box 4307, Victoria Park, Western Australia 6979 (**Lessee**)

Recitals

- A The Lessor leases the Land from the Headlessor under the Headlease.
- B The Lessor agrees to grant to the Lessee a sublease of the Premises on the terms contained in this lease.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this lease:

Business Day means a day on which the banks are open for business in Perth, Western Australia other than a Saturday, Sunday or public holiday in Perth, Western Australia;

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this deed;

Commencing Date means the date on which this lease has been executed by all parties;

Government Agency means any government, governmental, semi governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity;

Headlease means the lease of the Land from the Headlessor to the Lessor dated 1 November 2015, a copy of which is attached as Annexure B;

Headlessor means the landlord or lessor under the Headlease;

Land has the meaning given to 'Premises' in the Headlease;

Premises means that part of the Land having an area of 60 square metres and dimensions of 15 metres by 4 metres as shown on the plan in Schedule 2;

Term means the term of this lease being the period commencing on the Commencing Date and terminating on the Terminating Date; and

Terminating Date means 31 October 2025.

1.2 Interpretation

In this lease, unless the context otherwise requires:

- (a) a reference to:
- (i) one gender includes the others;

- (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this lease and references to this lease include any recital, schedule or annexure;
 - (iv) any contract (including this lease) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
 - (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
 - (x) time is a reference to legal time in Perth, Western Australia;
 - (xi) a reference to a day or a month means a calendar day or calendar month;
 - (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no party enters into this lease as agent for any other person (or otherwise on their behalf or for their benefit);
 - (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
 - (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
 - (e) headings and the table of contents are for convenience only and do not form part of this lease or affect its interpretation;
 - (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
 - (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
 - (i) where there are two or more persons in a party each are bound jointly and severally; and
 - (j) a provision of this lease must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this lease or the inclusion of the provision in this lease.

1.3 This lease is a sublease

This lease is a sublease and all references to 'lease' in this document are to be read and construed as referring to a sublease.

2 Grant

2.1 Grant

The Lessor leases the Premises to the Lessee for the Term.

2.2 Grant of lease conditional

The parties acknowledge that the Headlessor, under the terms of the Headlease, has consented to the grant of this lease subject to the conditions contained in the Town's letter to the Lessor dated 18 November 2021, a copy of which is attached as Annexure A.

3 Incorporation of terms of Headlease

3.1 Acknowledgement

The Lessee acknowledges that it has read a copy of the Headlease and is aware of its contents.

3.2 Incorporation of terms

- (a) The terms of the Headlease are incorporated into and form part of this lease as if each term is expressly reproduced in full in this lease, subject to:
 - (i) the amendments set out in Schedule 1; and
 - (ii) any provision in this lease to the contrary.
- (b) The Lessee must observe and perform the terms of the Headlease so far as they are applicable to the Lessee and the Premises under this lease as if the Lessee were the tenant under the Headlease.
- (c) The express incorporation of any clauses from the Headlease does not limit the general nature of clauses 3.2(a) and 3.2(b).
- (d) The amendments set out in Schedule 1 only apply as between the Lessor and the Lessee for the purposes of this lease and do not have the effect of varying the Headlease as between the Headlessor and the Lessor.

3.3 Terms defined in Headlease

- (a) A term or phrase not defined in this lease has the meaning given to it in the Headlease.
- (b) A reference to:
 - (i) the tenant or lessee in the Headlease is deemed to be a reference to the Lessee in this lease;
 - (ii) the landlord or lessor in the Headlease is deemed to be a reference to the Lessor in this lease;
 - (iii) the Premises in the Headlease is deemed to be a reference to the Premises in this lease; and
 - (iv) the Term in the Headlease is deemed to be a reference to the Term of this lease.

3.4 Amendments to Headlease

The terms of the Headlease as incorporated in this lease are amended as set out in Schedule 1.

3.5 Inconsistency

To the extent that any provision in this lease is inconsistent with the obligations imposed on either the Lessor or the Lessee by the Headlease, then the provisions of this lease prevail.

4 Termination

4.1 Automatic termination

This lease terminates automatically upon termination of the Headlease, unless the Headlessor notifies the Lessee that this lease may continue either for a definite or indefinite period.

4.2 Consequences of termination

If the Headlease is terminated:

- (a) the Lessor must notify the Lessee of the termination of this lease, as soon as practicable after the Headlease is terminated;
- (b) subject to clause 4.2(c), the Lessee is not entitled to make any Claim against the Lessor or the Headlessor; and
- (c) the rights of either party in respect of any Claim for a breach of this lease arising before the date of termination are not affected.

5 Lessee's further obligations

5.1 No breach of Headlease

To the extent that the obligations continue throughout the Term, the Lessee:

- (a) must not do or permit to be done anything which:
 - (i) causes or may cause the Lessor to breach the Headlease; or
 - (ii) affects the Lessor's rights under the Headlease; or
 - (iii) prejudices or gives cause for termination of the Headlease; and
- (b) must permit the Headlessor and any person having an interest in the Land superior to or concurrent with the Headlessor to exercise the Lessor's rights to enter and view the Premises and to carry out repairs, renovations, maintenance and other work on them and to exercise their other rights or comply with their other obligations in regard to their interests in the Land.

5.2 Benefit of Lessee's covenants

If a person other than the Lessor becomes entitled to receive the Rent payable under this lease, that person has the benefit of all covenants and agreements on the Lessee's part under this lease and the Lessee must, at the Lessor's cost, enter into those covenants and agreements with that other person as the Lessor may reasonably require.

5.3 No dealing with Lessee's interest

Despite any other provision in this lease or the Headlease, the Lessee must not assign, sublet, licence, part with or share possession or deal with its interest in the Premises or the interest created by this lease.

6 Lessor's further obligations

6.1 Compliance with Headlease

The Lessor must:

- (a) pay the rent due under the Headlease and comply with the Lessor's obligations under the Headlease, to the extent that they are not the Lessee's obligations under this lease; and
- (b) use reasonable endeavours (but need not commence proceedings) to ensure the Headlessor complies with its obligations under the Headlease, the breach of which may affect the Lessee's use and occupation of the Premises.

7 Consents and approvals

7.1 Headlessor's consent

- (a) Any provision of this lease which requires the Lessee to obtain the consent or approval of the Lessor is deemed to include an obligation on the Lessee to also obtain the consent or approval of the Headlessor.
- (b) Where anything requires the Headlessor's consent under the Headlease, the Lessee must not do that thing without the Headlessor's consent.

7.2 Lessor's consent

- (a) The Lessor may withhold its consent or approval if for any reason the consent or approval of the Headlessor is withheld.
- (b) The Lessor must use reasonable endeavours to procure the consent of the Headlessor when that consent is required by the Lessee but that does not preclude the Lessor from:
 - (i) refusing the Lessor's consent to the Lessee under this lease in respect of that matter; and
 - (ii) informing the Headlessor of the Lessor's refusal of consent and the reasons for the refusal.
- (c) Except as expressly stated otherwise in this lease, the Lessor may give or withhold consent to be given under this lease and is not obliged to give reasons for doing so.

8 Notices and correspondence

8.1 Lessee's obligation

The Lessee must forward to the Lessor immediately upon receipt, a copy of each notice and any correspondence from the Headlessor or a Government Agency in relation to:

- (a) a breach of the Headlease;
- (b) any work to be done at the Premises; or
- (c) the use or occupation of the Premises.

8.2 Lessor's obligation

The Lessor must forward to the Lessee copies of any notices or correspondence from the Headlessor or from a Government Agency relating to:

- (a) a breach of this lease;
- (b) any work required to be done at the Premises; or
- (c) the use or occupation of the Premises.

9 Indemnity and release

9.1 Lessee's indemnity and release

In addition and without prejudice to any other indemnity or release by the Lessee under this lease, the Lessee:

- (a) indemnifies the Headlessor from and against all Claims for which the Headlessor is or may become liable, whether during or after the Term, in respect of or arising from:
 - (i) any wilful or negligent act or omission;
 - (ii) any default under this lease; and/or
 - (iii) the use of the Premises,by or on the part of the Lessee except to the extent caused by the negligence of the Headlessor or its servants or agents; and
- (b) releases the Headlessor from any Claims for injury, death, loss or damage which may be suffered or sustained to any property or by any person on the Premises or on the Land, except to the extent caused by the negligence of the Headlessor or its servants or agents.

10 General

10.1 Costs and stamp duty

- (a) The Lessee must pay any duty (including any penalties) payable or assessed in connection with this lease.
- (b) Except as expressly stated otherwise in this lease, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this lease.

10.2 Governing law and jurisdiction

- (a) This lease is governed by and is to be construed in accordance with the laws applicable 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.

10.3 Exclusion of Statutory Provisions

To the extent permitted by law:

- (a) the covenants, powers and provisions (if any) implied in leases by virtue of any law are expressly negated; and
- (b) any law, requirement or moratorium which at any time directly or indirectly:
 - (i) extends or reduces the Term;

- (ii) lessens, varies or affects in favour of the Lessee any obligation under this lease;
- (iii) delays, prevents or prejudicially affects the exercise by the Lessor of any right, power or remedy given by this lease; or
- (iv) reduces or postpones the payment of rent or any part of it,

is excluded from this lease and may not be enforced by the Lessee against the Lessor.

Schedule 1

Amendments to Headlease

1. This Schedule sets out the amendments to the Headlease as it applies to this lease for the purpose of clause 3.2. These variations only apply as between the Lessor and the Lessee and do not have the effect of varying the Headlease as between the Headlessor and the Lessor.
2. The Headlease, as it applies to this lease, is amended as follows:
 - (a) clause 2 is excluded from this lease.
 - (b) all that text in clause 4.1 that appears after the first sentence is excluded from this lease.
 - (c) Item 5 of the Schedule is replaced with the following:
'The rental is \$1 per annum, if demanded.'
 - (d) the text in Item 7 of the Schedule is replaced with *'Not applicable'*.
 - (e) Item 8 of the Schedule is replaced with the following:
'The Premises are to be used only for operating a volunteer community lending and tool library and undertaking projects to deliver community benefits in the nature of creative collaboration, community connectivity, inclusivity and sustainability, as ancillary uses to the purpose for which the Land is leased to the Lessor under the Headlease. The Premises must not be used for any business, commercial, illegal or immoral purposes.'
 - (f) Items 12.1(i), (v) and 12.2 of the Schedule are excluded from this lease.
 - (g) the following special conditions are inserted into Item 12 of the Schedule:
'12.4 Lessee's Works
The following works are approved by the Lessor, subject to the Lessee obtaining any necessary statutory approvals:
 - (a) *the removal of a section of the fence on the Premises, of up to 15 metres in length; and*
 - (b) *the installation of a 40 foot sea container on the Premises, such that the sea container replaces the section of the fence to be removed under Special Condition 12.4(a) (**Sea Container**).*

12.5 Make Good

Without limiting any other obligation imposed upon the Lessee under this Lease, upon the expiration or sooner determination of the Term:
 - (a) *to reinstate the fencing referred so in Special Condition 12.4(a) to the Lessor's reasonable satisfaction; and*
 - (b) *to remove the Sea Container and reinstate the Premises to a condition consistent with that prior to the installation of the Sea Container.*

12.6 Use of Utilities

Without limiting Clauses 4.2, 4.3 or 4.4 of the Lease, the Lessor grants the Lessee permission to connect to and utilise the Lessor's electricity supply as needed. The Lessee must meet any costs associated with increased electricity costs borne by the Lessor.'
- (h) replace the plan in Annexure 1 with the plan in Schedule 2.

Schedule 2
Plan of Premises



Executed as a deed

The Common Seal of Victoria Park Carlisle Bowling Club Inc. ABN 93 370 820 883 was affixed by authority of a resolution of the Committee of the said Club by and in the presence of:



[Handwritten Signature]
Signature of President

[Handwritten Signature]
Signature of Vice President

PHIL LONG
Name of President

PATRICK KEEFFE
Name of Vice President

[Handwritten Signature]
Signature of Secretary

CAROL LEE
Name of Secretary

15.7.22
Date

The Common Seal of The Vic. Park Collective Inc ABN 66 878 966 297 was affixed by authority of a resolution of the Committee of the said Club by and in the presence of:



[Handwritten Signature]
Signature of Authorised Person

[Handwritten Signature]
Signature of Authorised Person

CHAIRPERSON
Position of Authorised Person

VICE CHAIRPERSON
Position of Authorised Person

JETHRO SERCOMBE
Name of Authorised Person

Name of Authorised Person

14/7/2022
Date

ZOE O'NEILL

Annexure A
Headlessor's Consent



18 November 2021

Carol Lee
Club Secretary
Victoria Park Carlisle Bowling Club
PO Box 1036
EAST VICTORIA PARK WA 6981

Our Ref: D15/62389

Enquiries: Peter Scasserra
Telephone: **08 9311 8111**
Email: **admin@vicpark.wa.gov.au**
Your Ref:

Dear Carol

RE: Sublease approval – Victoria Park Collective Inc and Street Roller Hockey Inc

The Town have reviewed both sublease proposals and would like to grant consent to the Victoria Park Carlisle Bowling Club to sublet a portion of 18 Kent Street East Victoria Park to Victoria Park Collective Inc and Street Roller Hockey Inc, subject to conditions including the following:

- The Town reviewing and being satisfied with the sublease agreements;
- The sublease agreements being prepared at the Lessee/Sublessee's cost;
- The inclusion of a redevelopment clause;
- The inclusion of an insurance clause providing adequate insurance coverage (including public liability);
- The inclusion of an indemnity clause indemnifying the Town; and
- The expiry date of both sublease agreements not extending beyond the head lease expiry date on 31 October 2025.

Please note we will be reviewing the sublease agreements internally, if in our opinion the sublease documents present matters which will need the Town to arrange its own legal review then it will be at the Lessee's cost.

If you wish to contact me, please do not hesitate to call me on 08 9311 8111 or email admin@vicpark.wa.gov.au

Yours sincerely

Peter Scasserra
Land and Properties Project Officer



TEL (08) 9311 8111 **FAX** (08) 9311 8181 **ABN** 77 284 859 739
EMAIL admin@vicpark.wa.gov.au **VISIT** victoriapark.wa.gov.au
Administration Centre, 99 Shepperton Road, Victoria Park WA 6100
Locked Bag No. 437, Victoria Park WA 6979

Annexure B
Headlease

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 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 tenantable 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 tenantable 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 11,400m² 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

