

Lease

Shire of Jerramungup

Bremer Bay Sports Club Inc



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Details

Parties

Shire of Jerramungup

of PO Box 92, Jerramungup, Western Australia, 6337
(Lessor)

Bremer Bay Sports Club Inc

of Lot 3000 Frantom Way, Bremer Bay, Western Australia, 6338
(Lessee)

Background

- A The Lessor is the management body of the Land under the Management Order.
- B Under the Management Order, the City has the power to lease the Land for any term not exceeding 21 years, subject to the approval of the Minister for Lands being first obtained.
- C The Lessor has agreed to grant to the Lessee a lease of the Premises under the Management Order and on the provisions of this Lease.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Lease, unless otherwise required by the context or subject matter -

Alterations means any of the acts referred to in **clause 11.1(a) to (c)**.

Amounts Payable means the Rent and any other money payable by the Lessee under this Lease;

Authorised Person means -

- (a) an agent, employee, licensee or invitee of the Lessee; and
- (b) any person visiting the Premises with the express or implied consent of any person mentioned in **paragraph (a)**;

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

Commencement Date means the date of commencement of the Term specified in Item 4 of the Schedule;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Crown Land Title for the Land;

Further Term means the further term specified in **Item 3** of the Schedule (if any);

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

Land means the land described at **Item 1** of the Schedule;

Lease means this deed as supplemented, amended or varied from time to time;

Lessee's Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by any person other than the Lessor;

Lessor's Covenants means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be performed and observed by the Lessor;

Management Order means the Management Order made by the Minister for Lands under section 46 of the *Land Administration Act 1997* under which the Minister placed the care, control and management of the land with the Lessor to be used only for the designated purpose of recreation;

Minister for Lands means the Minister for Lands in her or his capacity as the body corporate continued under section 7(1) of the *Land Administration Act 1997*;

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Party means the Lessor or the Lessee according to the context;

Permitted Purpose means the purpose set out in **Item 7** of the Schedule;

Premises means the premises described in **Item 1** of the Schedule;

Rent means the rent specified in **Item 5** of the Schedule as varied from time to time under this Lease;

Rent Period means each period from the Commencement Date or a Rent Review Date to the next Rent Review Date or Termination;

Rent Review Date means each anniversary of the Commencement Date during the Term; **(delete if no rent review)**

Schedule means the Schedule to this Lease;

Term means the term of years specified in **Item 2** of the Schedule; and

Termination means the date of -

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over.

1.2 Interpretation

In this Lease, unless expressed to the contrary -

- (a) words importing -
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender include each gender;
- (b) a reference to -
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;
 - (iii) a professional body includes a successor to or substitute for that body;
 - (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
 - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;

- (vii) 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;
 - (viii) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to -
 - (A) both express and implied provisions; and
 - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
 - (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- (c) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include -
- (i) covenants not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (ii) a covenant to do everything necessary to ensure that that act or thing is not done or omitted to be done;
- (d) except in the Schedule, headings do not affect the interpretation of this Lease; and
- (e) if a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

2. Grant of Lease

- (1) The Lessor leases to the Lessee the Premises for the Term subject to -
- (a) the approval of the Minister for Lands;
 - (b) all Encumbrances;
 - (c) the payment of the Amounts Payable; and
 - (d) the performance and observance of the Lessee's Covenants.
- (2) The Lessee accepts the Lease granted by the Lessor under this clause.

3. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the management body of the Premises under the Management Order, and subject to the performance and observance of the Lessee's Covenants, the Lessee may quietly hold and enjoy the Premises during the Term without

any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

4. Rent and other payments

4.1 Amounts to be paid by Lessee

The Lessee covenants with the Lessor -

(1) Rent

to pay to the Lessor the Rent in the manner set out at Item 5 of the Schedule on and from the Commencement Date clear of any deductions.

(2) Outgoings

- (a) to pay to the Lessor or to such person as the Lessor may from time to time direct all of the outgoings or charges, assessed or incurred in respect of the Premises, including telephone, electricity, gas and other power and light charges (including but not limited to meter rents and the cost of the installation of any meter, wiring or telephone connection), and all other consumption charges or costs, statutory imposts or other obligations incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (b) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in paragraph (b)(i) being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

(3) Interest

without affecting the rights, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 7 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

(4) Costs

- (a) to pay to the Lessor on demand all duty, fines and penalties payable under the *Stamp Act 1921* and other statutory duties or taxes payable on or in connection with this Lease;
- (b) to pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to -
 - (i) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (ii) any breach of covenant by the Lessee or an Authorised Person;
 - (iii) the preparation and service of a notice under section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
 - (iv) any work done at the Lessee's request; and
 - (v) any action or proceedings arising out of or incidental to any matters referred to in paragraph (d) or any matter arising out of this Lease.

4.2 Payment of money

Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in this Lease or as otherwise directed by the Lessor by Notice from time to time.

5. Accrual of Amounts Payable

Amounts Payable accrue on a daily basis.

6. Insurance

6.1 Insurance to be effected

The Lessee must effect and maintain with insurers approved by the Lessor in the joint names of the Lessor and the Lessee for their respective rights and interest in the Premises for the time being adequate public liability insurance for a sum not less than the sum set out at Item 6 of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

6.2 Details and receipts

In respect of the insurances required by **clause 6.1** the Lessee must -

- (a) on demand supply to the Lessor details of the insurance and give to the Lessor copies of certificates of currency;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums paid or each certificate of currency issued by the insurers approved by the Lessor; and
- (c) notify the Lessor immediately -
 - (i) when an event occurs which gives rise or might give rise to a claim under, or which could prejudice, a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

6.3 Not to invalidate

The Lessee must -

- (a) not do or omit to do any act or thing or bring or keep anything on the Premises which might -
 - (i) render the insurance on the Premises or any adjoining premises void or voidable; or
 - (ii) cause the rate of a premium to be increased for the Premises or any adjoining premises; and
- (b) pay any increase in the rate of a premium referred to in paragraph (a) on the demand of the Lessor.

6.4 Report

Each Party must report to the other promptly in writing and in an emergency verbally -

- (a) any damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person in or on the Premises.

6.5 Settlement of claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clause 6.1**.

6.6 Lessor as attorney

The Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term -

- (a) in respect to all matters and questions which may arise in relation to any policy of insurance required by **clause 6.1**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurance policies required by **clause 6.1**;
- (c) to give good and effectual receipts and discharges for the insurance policies required by **clause 6.1**; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

7. Indemnity

7.1 Indemnity

The Lessee indemnifies the Lessor and the Minister for Lands against any liability or loss arising from and any costs, charges and expenses incurred in connection with -

- (a) any damage to the Premises, or any loss of or damage to anything on it; and
- (b) any injury to any person on the Premises,

and for which the Lessor or the Minister for Lands becomes liable.

7.2 Indemnity unaffected by insurance

The Lessee's obligation to indemnify the Lessor under this Lease or at law is not affected by the Lessee's obligation to insure under **clause 7** or at law and the indemnity under **clause 7.1** is paramount.

7.3 Receipt of insurance money

If insurance money is received by the Lessor for any of the obligations set out in this clause, then the Lessee's obligations under **clause 7.1** will be reduced by the extent of such payment.

8. Limit of Lessor's liability

- (1) The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring and the Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

- (2) Subject to **subclause (1)**, the Lessor is only liable for breaches of the Lessor's Covenants which occur while the Premises are in the care, control and management of the Lessor under the Management Order.

9. Maintenance, repair and cleaning

9.1 Maintenance

- (1) The Lessee must maintain, at its own expense, the Premises (including but not limited to any structural parts, plate glass, electrical installations, gas and water pipes and fittings, toilets, sanitary appliances, drains, septic tanks and leach drains) in good, safe order, repair and condition, (fair, wear and tear excepted) and any major maintenance must be undertaken in consultation with the Lessor.
- (2) The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.
- (3) The Lessee must take such reasonable action as is necessary to -
- (a) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
 - (b) rectify or otherwise ameliorate,
- the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

9.2 Repair

The Lessee must promptly repair at its own expense to the satisfaction of the Lessor any damage to the Premises, regardless of how it is caused, and replace any of the Lessor's fixtures and fittings which are or which become damaged.

9.3 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish and must not leave rubbish bins or containers outside the Premises other than on official rubbish collections days.

9.4 Maintain surroundings

- (1) The Lessee must maintain any part of the Premises which surrounds any buildings in good condition including but not limited to any flora, gardens and lawns and tend to the pruning of trees.
- (2) Any pruning of trees must be undertaken by a qualified tree surgeon.
- (3) If any flora, trees or lawn dies the Lessee must replace the flora, trees and lawn at its own expense.
- (4) The Lessor will maintain any reticulation system present on the Premises but any damage caused by the Lessee's negligence or the negligence of an Authorised Person must be repaired at the Lessee's expense.
- (5) All major works on and major maintenance of the flora, gardens, lawns or trees on the grounds surrounding any buildings on the Premises must only be undertaken with the Lessor's prior written approval if the costs of works exceeds \$10,000.
- (6) The Lessee must comply with all reasonable requirements made by the Lessor in regard to the works or maintenance referred to at paragraph (e).

9.5 Pest control

The Lessee must keep the Premises free of animals, birds, insects reasonably considered by the Lessor to be pests and the cost of pest extermination will be borne by the Lessee.

9.6 Paint and decorate

- (1) The Lessee must, if required by the Lessor during the Term -
 - (a) paint with at least 2 coats of paint those parts of the Premises usually painted both internally and externally on or before each of the dates set out in Item 8 of the Schedule;
 - (b) paper those parts of the Premises usually papered;
 - (c) redecorate all parts of the Premises in the same manner as they have previously been decorated; and
 - (d) repair any damage to the decoration, paint or paper on the Premises commencing in the year 2015.
- (2) The registered painting contractor or other person engaged by the Lessee to redecorate the Premises must -
 - (a) do so in a proper manner using good quality materials; and
 - (b) comply with all reasonable directions given or requests made by the CEO.

9.7 Acknowledgement of state of repair of Premises

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the Lease with full knowledge of the structural state and state of repair of the Premises.

10. Alterations

10.1 Restriction

The Lessee must not -

- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises;
- (b) erect or construct any building on the Premises;
- (c) remove, alter or add to any fixtures, fittings or facilities in or on the Premises; or
- (d) subject to the performance of the Lessee's obligations in **clause 9**, remove any flora, trees or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises,

unless the Lessee has obtained the prior written consent of -

- (e) of the Lessor;
- (f) of any other person from whom consent is required under this Lease;
- (g) of the insurers approved under **clause 6**,

and the Parties agree that any consent may be given upon certain conditions (**Conditions**).

10.2 Consent

If the Lessor -

- (a) and all other persons whose consent is required under this Lease or at law consents to any matter referred to in **clause 10.1** the Lessor may -
 - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (ii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (b) consents to any matter referred to in **clause 10.1** -
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (ii) the Lessee must apply for and obtain all such consents, approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

10.3 Work to be at Lessee's expense

All works undertaken under this clause will be carried out at the Lessee's expense.

10.4 Conditions

- (1) Subject to **clause 10.4(2)**, if any of the persons referred to in **clause 10.1(e)** to **(g)** impose Conditions with respect to the proposed Alterations, the Lessee must comply with the Conditions if it is entitled at law to proceed to make the Alterations and does so proceed.
- (2) If any of the Conditions require other works to be done by the Lessee, then the Lessee must at the option of the Lessor either -
 - (a) carry out those other works at the Lessee's expense; or
 - (b) permit the Lessor to carry out those other works at the Lessee's expense,in accordance with the Lessor's requirements.

11. Use

11.1 Restrictions on use

The Lessee must not and must not suffer or permit a person to -

- (a) use the Premises for any purpose other than for the Permitted Purpose;
- (b) use the Premises for any purpose which is not permitted under any town planning scheme or any law relating to health;
- (c) do or carry out on the Premises any harmful, offensive, or illegal act, matter or thing;
- (d) do or carry out on the Premises anything which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties;

- (e) store any dangerous compound or substance on or in the Premises; or
- (f) do any act or thing which might result in excessive stress or harm to any part of the Premises.

11.2 No warranty

The Lessor gives no warranty -

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

11.3 Premises subject to restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

11.4 Indemnity for costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in **clauses 11.1 to 11.3**.

12. Lessor's right of entry

12.1 Entry on reasonable notice

The Lessee or any Authorised Person must permit entry by the Lessor or any person authorised by the Lessor, on reasonable notice, except in the case of an emergency, onto the Premises -

- (a) at all reasonable times;
- (b) with or without workmen and others;
- (c) with or without plant, equipment, machinery and materials; and
- (d) for each of the following purposes -
 - (i) to inspect the state of repair of the Premises and to ensure compliance with the provisions of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Covenants under this Lease or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Lessee of any of the Lessee's Covenants, but the Lessor is under no obligation to rectify any breach and any rectification under this subparagraph is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

12.2 Costs of rectifying breach

All costs and expenses incurred by the Lessor as a result of any breach referred to in **clause 12.1(d)** together with any interest payable on such sums, will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

13. Statutory obligations and notices

13.1 Comply with Statutes

The Lessee must -

- (a) comply promptly with all statutes relating to the Premises or to the Lessee's use of the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises for the Permitted Purpose;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on on the Premises.

13.2 Indemnity if fails to comply

The Lessee indemnifies the Lessor against -

- (a) failing to perform, discharge or execute any of the items referred to in **clause 13.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 13.1**.

14. Report to Lessor

The Lessee must immediately report to the Lessor -

- (a) any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police;
- (b) any occurrence or circumstances in or near the Premises, of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately give them to the Lessor.

15. Default

15.1 Events of default

A default occurs if -

- (a) any Amounts Payable remain unpaid for 7 days after becoming due whether or not a demand or Notice has been given to the Lessee;

- (b) the Lessee is in breach of any of the Lessee's Covenants (other than the covenant to pay the Amounts Payable) for 14 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (c) an order is made or a resolution effectively passed for the winding up of the Lessee unless the winding up is for the purpose of amalgamation or reconstruction;
- (d) a controller, as defined by the Corporations Law, is appointed in respect of the property of the Lessee under this Lease;
- (e) a mortgagee takes possession of the property of the Lessee under this Lease;
- (f) any execution or similar process is made against the Lessee's property on the Premises;
- (g) the Premises are vacated by the Lessee prior to Termination;
- (h) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of rents or profits; or
- (i) any application is made or notice given or any other procedure started by which the registration of this Lease is to be cancelled or dissolved under the Corporations Law.

15.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 15.1** the Lessor may -

- (a) without Notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by Notice to the Lessee determine this Lease and from the date of giving such Notice this Lease will be absolutely determined; and
- (c) by Notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month, when this Lease will be determined as from the giving of the Notice, and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 18**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

15.3 Lessor may remedy breach

If the Lessee -

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's costs and expenses of remedying each breach or default.

15.4 Acceptance of Amounts Payable by Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers conferred on the

Lessor by the provisions of this Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

15.5 Essential provisions

Each of the Lessee's Covenants in **clauses 4** (Rent and other payments), **6** (Insurance), **7** (Indemnity), **9** (Maintenance, repair and cleaning), **11** (Use), **22** (Assignment, subletting and charging) and **33** (Goods and services tax) is an essential provision of this Lease, but this subclause does not mean or imply that there are no other essential provisions in this Lease.

15.6 Breach of essential provisions

If the Lessee breaches an essential provision of this Lease then, in addition to any other remedy or entitlement of the Lessor -

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential provision;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential provision; and
- (c) the Lessee covenants with the Lessor that if the Term is determined -
 - (i) for breach of an essential provision or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any Notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by effluxion of time, together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including, but not limited to, the costs of reletting or attempting to re-let the Premises.

15.7 Clause 15.6(c) to survive Termination

The Lessee agrees that the covenant set out in **clause 15.6(c)** will survive Termination or any deemed surrender at law of the estate granted by this Lease.

15.8 Lessee may deduct amounts for re-letting

The Lessee may deduct from the amounts referred to in **clause 15.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of the determination of this Lease and the date on which the Term would have expired by effluxion of time.

15.9 Lessor to mitigate its losses

The Lessor must take reasonable steps to mitigate its losses and endeavour to relet the Premises at a reasonable rent and on reasonable provisions, but the Lessor is not required to offer or accept rent or provisions which are the same or similar to the Rent or provisions contained or implied in this Lease.

16. Damage or destruction

16.1 Damage or destruction

If the Premises or any part of the Premises are totally or partially destroyed so as to require major rebuilding the Lessor -

- (a) may within 2 months of the destruction or the damage terminate the Term with immediate effect by giving Notice to the Lessee; or
- (b) require that the Lessee must, within a reasonable time from the date of destruction or damage, rebuild the Premises to its original state and condition to the satisfaction of the Lessor and in accordance with the requirements of all relevant authorities.

16.2 Insurance proceeds

If the Lessor -

- (a) terminates the Term in accordance with **clause 16.1** all insurance proceeds, including any proceeds payable to the Lessee in respect of the Premises, will be paid to and retained by the Lessor; or
- (b) requires the Lessee to rebuild the Premises, all insurance proceeds will be applied to the rebuilding with any shortfall paid by the Lessee.

17. Option to renew

17.1 Exercise of option

If the Lessee at least one month, but not earlier than 12 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term stipulated in Item 3 of the Schedule (if any) and -

- (a) all consents and approvals required by the provisions of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in -
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Covenants,

the Lessor may, at the Lessor's absolute discretion, grant to the Lessee a lease for the Further Term at the Rent and on provisions similar to this Lease other than this clause in respect of the Further Term and on such other provisions as the Lessor may consider appropriate. For the avoidance of doubt, this clause shall not apply if no Further Term is stipulated in Item 3 of the Schedule.

17.2 Execution of deed of extension of Lease

Upon the valid exercise of the option to extend this Lease for the Further Term under **clause 17.1**, the Lessee shall prior to the expiration of the Term by effluxion of time, execute a deed recording the extension of this Lease prepared by the Lessor's solicitors.

17.3 Costs of deed of extension

The Lessee shall pay to the Lessor on demand -

- (a) the costs of the Lessor's solicitors in preparing the deed of extension of this Lease referred to in **clause 17.2**; and
- (b) all stamp duty and any late payment fines payable on the deed of extension of this Lease, and any copies.

18. 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 rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same provisions of this Lease, provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

19. Restore premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease, fair wear and tear excepted.

20. Yield up the Premises

20.1 Peacefully surrender

On Termination the Lessee must -

- (a) peacefully surrender and yield up to the Lessor the Premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease; and
- (b) surrender to the Lessor all keys and security access devices and combinations for locks providing access to or within the Premises held by the Lessee, whether or not provided by the Lessor.

20.2 Clause 20.1 to survive Termination

The Lessee's obligation under **clause 20.1** shall survive Termination.

21. Removal of property from Premises

21.1 Remove property prior to Termination

Prior to Termination, the Lessee must remove from the Premises all property of the Lessee including the Lessee's fixtures and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal of that property or fixtures.

21.2 Lessor can remove property on Re-Entry

On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee, and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property.

22. Assignment, subletting and charging

22.1 No assignment or subletting without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and the Minister for Lands and any other persons whose consent is required under this Lease or at law.

22.2 Change in ownership of shares

If the Lessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the Corporations Law will be deemed to be an assignment of the leasehold estate created by this Lease.

22.3 Lessor's consent to assignment and subletting

Provided all parties whose consent is required under this Lease or at law to an assignment or subletting give their consent, then the Lessor may not unreasonably withhold its consent to the assignment or subletting of the leasehold estate created by this Lease if -

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by -
 - (i) the proposed assignee of a deed of assignment; or
 - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the deed of assignment contains a covenant by the assignee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants or the deed of sublease contains a covenant by the sublessee with the Lessor to pay all the Amounts Payable and to perform and observe all of the Lessee's Covenants in respect of the subleased area of the Premises.

22.4 Consents of assignee supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning lessee from the Lessee's Covenants.

22.5 *Property Law Act 1969*

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

22.6 Costs for assignment and subletting

If the Lessee wishes to assign or sublet the leasehold estate created by this Lease, the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to -

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
 - (b) any consents required under this Lease or at law; and
 - (c) all other matters relating to the proposed assignment or subletting,
- whether or not the assignment or subletting proceeds.

22.7 No mortgage or charge

The Lessee must not mortgage or charge the Premises.

23. Acts by agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

24. Governing law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

25. Statutory powers

The powers conferred on the Lessor by or under any statutes are, except to the extent that they are inconsistent with the provisions of this Lease, in addition to the powers conferred on the Lessor in this Lease.

26. Notice

26.1 Form of delivery

A Notice to a Party must be in writing and may be given or made -

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by Notice to the other.

26.2 Service of Notice

A Notice to a Party is deemed to be given or made -

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 26.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 26.1(b)**, on the second business day following the date of posting of the Notice.

26.3 Signing of Notice

A Notice to a Party may be signed -

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 1987*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

27. Severance

If any part of this Lease is, or becomes, void or unenforceable that part is or will be, severed from this Lease to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

28. Disputes

28.1 Appointment of arbitrator

Except as otherwise provided, any dispute arising out of this Lease is to be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* and the Lessor and the Lessee may each be represented by a legal practitioner.

28.2 Payment of Amounts Payable to date of award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee, then the Lessor will refund to the Lessee the money paid.

29. Variation

This Lease may be varied only by deed executed by the Parties subject to such consents as are required by this Lease or at law.

30. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the provisions of this Lease do not, to the fullest extent permitted by law, apply to limit the provisions of this Lease.

31. Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions of this Lease.

32. Waiver

32.1 No general waiver

A failure by the Lessor to exercise or its delay in exercising any right, power or privilege in this Lease does not operate as a waiver of or otherwise impair that right, power or privilege.

32.2 Partial exercise of right power or privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

33. Goods and services tax

33.1 Definitions

The following definitions apply for the purpose of this clause -

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;
- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease; and
- (d) **Supply** means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

33.2 Lessee to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to at paragraph (a) whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

33.3 Consideration in kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 33.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

33.4 No contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

33.5 Statement of GST paid is conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

33.6 Tax invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

33.7 Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

34. Commercial Tenancy Act

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

35. Caveat

35.1 No absolute caveat

The Lessee or any person on behalf of the Lessee shall not, without the prior written consent of the Lessor, lodge any absolute caveat at the Department of Land Administration against the Certificate of Crown Land Title for the Land, to protect the interests of the Lessee under this Lease.

35.2 CEO and Lessor as attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally -

- (a) for the Term of this Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of 6 months after Termination,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at the Department of Land Information -

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease,

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

36. Indemnity and ratification

36.1 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under **clause 35**.

36.2 Indemnity

The Lessee indemnifies the Lessor against -

- (a) any loss arising from any act done under **clause 35**; and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under **clause 35**.

37. Additional covenants

Each of the terms, covenants and conditions specified in Item 9 of the Schedule shall be deemed part of this Lease and shall be binding upon the Lessor and the Lessee as if incorporated in the body of this Lease.

Schedule

Item 1 Land and Premises

Land

Part Reserve 511 comprising Lot 3000 on Deposited Plan 46739 and being the whole of the Land comprised in Crown Land Title Volume LR3159 Folio 707

Premises

That part of the Land (comprising 101.9722 hectares) and which is coloured in blue, for the purpose of general identification only, on the plan annexed to this Lease as **Annexure 1**, together with all buildings, structures, alterations, additions and improvements on that part of the Land or erected on that part of the Land during the Term.

Item 2 Term

21 years from 15 April 2015 and expiring on 14 April 2036.

Item 3 Further Term

Nil

Item 4 Commencement Date

15 April 2015

Item 5 Rent

One peppercorn per annum payable on demand by the Lessor.

Item 6 Public liability insurance

Ten million dollars (\$10,000,000.00)

Item 7 Permitted purpose

Sports and Recreational Club

Item 8 Paint and decorate

Once every 7 years during the Term

Item 9 Additional terms and covenants

1. Lessor responsible for Shared Use Trail

The parties acknowledge and agree that -

- (a) maintenance and insurance of the Shared Use Trail situated partially within the Premises remains the responsibility of the Lessor at all times;
- (b) the grant of Lease made pursuant to cl. 3 is subject to the Lessor's reserved right for continued use of the Shared Trail by members of the public, such use not to be obstructed or prevented by the Lessee.

Signing page

EXECUTED

day of

2015

THE COMMON SEAL of the **SHIRE OF JERRAMUNGUP** is affixed in the presence of -

Mayor

Print full name

Chief Executive Officer

Print full name

THE COMMON SEAL of **BREMER BAY SPORTS CLUB (INC)** is affixed in the presence of -

Signature of President

Signature of secretary

Name of President

Name of secretary

APPROVAL OF MINISTER FOR LANDS:

Annexure A – Plan of Premises

