Lease – Part Reserve 18944, Lots 578 & 643 Gnowangerup Jerramungup Road

Shire of Jerramungup

Jerramungup Districts Motorcycle Club Inc.

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Details

Parties

Shire of Jerramungup

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

Jerramungup Districts Motorcycle Club Inc.

of Lot 578 Gnowangerup Jerramungup Road, Jerramungup, Western Australia
(**Lessee**)

Background

A The Lessor is the management body of the land described in **Item 1(a)** of the Schedule under the Management Order (**Land).**

B Under the Management Order the Lessor has the power to lease the Land for any term not exceeding 21 years, subject to the approval of the Minister for Lands first being obtained.

C The Lessee has requested that the Lessor grant it a lease of that portion of the Land described in **Item 1(b)** of the Schedule (**Premises**), and the Lessor has agreed subject to the Parties entering into this agreement.

Agreed Terms

1. Grant of lease

Subject to **clause 27** of this Lease, the Lessor leases to the Lessee the Premises for the Term subject to:

(a) all Encumbrances;

(b) payment of the Amounts Payable; and

(c) performance of the Lessee's Obligations.

LESSEE'S RIGHTS & OBLIGATIONS

2. 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 of the Lessee's Obligations 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.

3. Rent and other payments

3.1 Rent

The Lessee must 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.

3.2 Outgoings

(1) The Lessee must pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges, assessed or incurred in respect of the Premises:

(a) local government rates, specified area rates, taxes, service and other charges and including charges for rubbish and garbage removal;

(b) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;

(c) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection;

(d) emergency services levy;

(e) land tax on a single ownership basis;

(f) premiums, excess and other costs arising from the insurance obtained by the Lessor pursuant to **clause 21**. For the avoidance of doubt, the parties agree:

(i) that if such premium or cost does not include a separate assessment or identification of the Premises or the Land, the Lessee must pay a proportionate part of such premium or cost determined by the Lessor acting reasonably; and

(ii) such insurance will include insurance for the full replacement value of buildings; and

(iii) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.

(2) 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 **clause 3.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

3.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, the Lessee must 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.

3.4 Costs

(1) The Lessee must pay to the Lessor on demand:

(a) all duty, fines and penalties payable under the *Duties Act* 2008 and other statutory duties or taxes payable on or in connection with this Lease;

(b) all registration fees in connection with this Lease; and

(c) all legal costs of and incidental to the instructions for the preparation, execution and any duty payable on this Lease and all copies.

(2) The Lessee must 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:

(a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;

(b) any breach of covenant by the Lessee or the Lessee's Agents;

(c) 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;

(d) any work done at the Lessee's request; and

(e) any action or proceedings arising out of or incidental to any matters referred to in this clause 3.4 or any matter arising out of this Lease.

3.5 Accrual of amounts payable

Amounts Payable accrue on a daily basis.

4. Rent review

(1) The Rent will be reviewed on and from each Rent Review Date as stipulated in **Item 8** of the Schedule to determine the Rent to be paid by the Lessee until the next Rent Review Date.

(2) At each Rent Review Date the Rent payable during the immediately preceding period will be increased in the manner specified in **Item 8** of the Schedule.

(3) The Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

5. Payment of money

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

6. Insurance

6.1 Insurance required

The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interest in the Premises) for the time being:

(a) adequate public liability insurance for a sum not less than the sum set out at **Item 7** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;

(b) insurance against all risks as the Lessor may require, of all plate glass windows, doors and display show cases forming part of or within the Premises for a sum which is not less than its full insurable value; and

(c) where the Lessor so requires, insurance to cover the Lessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary.

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 insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;

(b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; 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.

(d) apply the proceeds of any claim made under any of the insurance policies to the purpose for which the insurance was effected on terms first approved by the Lessor in writing.

6.3 Not to Invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might;

(a) render any insurance effected under **clause 6.1** on the Premises, or any adjoining premises, void or voidable;

(b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

6.4 Reports

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 who is lawfully using or may lawfully use the Premises.

6.5 Lessee May be Required to Pay Excess on Insurances

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 6.1**.

6.6 Lessee's equipment and possessions

The Lessee ACKNOWLEDGES it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

7. Indemnity

7.1 Lessor and Minister of Lands indemnified

The Lessee indemnifies and must keep indemnified the Lessor and the Minister for Lands against any Loss or other liability resulting from:

(a) any damage to the Premises or other property; or

(b) the death of, illness of or injury to, any person**,**

to the extent caused or contributed to by:

(c) any breach of the Lease by the Lessee; or

(d) the use or occupation of the Premises by the Lessee or an Authorised Person, including but not limited to use of any motorcross or motorcycle track situated on the Premises by any person; or

(e) any work carried out by, for or on behalf of the Lessee under this Lease; or

(f) the Lessee's activities, operations, business or other use of the Premises of any kind under this Lease; or

(g) any act, omission, negligence or default of the Lessee or an Authorised Person; or

(h) any danger created by the Lessee or an Authorised Person.

7.2 Release

(1) The Lessee:

(a) agrees to occupy, use and keep the Premises at the risk of the Lessee;

(b) releases to the full extent permitted by law the Lessor and the Minister for Lands from:

(i) any liability which may arise in respect of any accident or damage to property or death or injury to, or illness of, any person, of any nature in or near the Premises; and

(ii) loss of or damage to fixtures or personal property of the Lessee;

except to the extent that such loss or damage is caused by the gross negligence of the Lessor or a breach of the provisions of this Lease by the Lessor.

(2) The obligations of the Lessee under this **clause 7** continue after the expiration or earlier determination of the Lease in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of the Lease.

7.3 Lessor and Minister for Lands not liable

The Lessor and the Minister for Lands shall not be liable for any Loss or other liability resulting from any accident, loss of life, injury, damage, malfunction or other event in, or affecting, the Premises unless, but only to the extent, caused by the gross negligence of the Lessor or the Minister for Lands as the case may be.

7.4 Part 1F of the Civil Liability Act excluded

Should the Lessee commit or be responsible for the commission of a tortious act or contractual breach, Part 1F of the *Civil Liability Act 2002* is hereby excluded.

7.5 Indemnity Unaffected by Insurance

The Lessee's obligation to indemnify the Lessor under this Lease or at law is not affected by any insurance maintained by the Lessor in respect of the Premises and the indemnity under **clause 7.1** is paramount.

7.6 Lessee's assumption of responsibilities

Notwithstanding any other provision of the Lease, the Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it were the owner and occupier of the freehold of the Premises.

8. Use

8.1 Restrictions on Use

(1) Generally

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

(i) use the Premises or any part of it other than for the use stipulated in **Item 6** of the Schedule (**Permitted Use**); or

(ii) use the Premises for any purpose which is not permitted under any local planning scheme, local laws, acts, statutes or any law relating to health.

(2) No offensive or illegal acts

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

(3) No nuisance

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

(4) No dangerous substances

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:

(a) any such storage must comply with all relevant statutory provisions;

(b) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;

(c) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and

(d) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

(5) No harm or stress

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(6) No signs

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(7) No smoking

The Lessee must not suffer or permit a person to smoke in any building on the Premises.

(8) Consumption of alcohol

The Lessee must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol without first obtaining the written consent of the Lessor.

(9) Sale of Alcohol

The Lessee will not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988 Liquor Licensing Regulations 1989* and any other relevant written laws that may be in force from time to time.

(10) Removal of rubbish

The Lessee must keep the Premises free from dirt and rubbish and to store and keep all trade waste and garbage in proper receptacles.

(11) No pollution or contamination

The Lessee must do all things necessary to prevent pollution or contamination of the Premises or any land in the vicinity of the Premises arising from the Lessee's use of the Premises. If pollution or contamination of the Premises occurs by reason of or arising from the Lessee's use of the Premises, the Lessee shall rectify such pollution or contamination, in accordance with legislative requirements and to the satisfaction of the Lessor.

(12) No breach of copyright

The Lessee shall not do any act, nor authorise or permit any person to do any act that constitutes a breach or infringement of copyright under the *Copyright Act 1968* (Cth).

(13) Toilets

The Lessee must not use or permit toilets or other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any act or thing to be done that might obstruct or otherwise affect or damage the same.

8.2 No Warranty

The Lessor gives no warranty:

(a) as to the suitability of the Premises for the Permitted Use; 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.

8.3 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.

8.4 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 this clause.

9. Keys and access

9.1 No additional copies without approval

Unless otherwise approved by the Lessor in writing, the Lessee, where it has been provided with keys to the Premises by the Lessor, must not have additional sets of keys copied or cut.

9.2 Notify the Lessor of lost keys

(1) The Lessee must notify the Lessor of any loss of keys immediately; and

(2) To ensure all keys conform with the Lessor's master keys, the Lessor will arrange for replacement keys to be issued to the Lessee at the Lessee's cost.

9.3 No change of locks without approval

(1) The Lessee must not change any locks on the Premises, without the prior approval of the Lessor.

(2) If the locks are changed the Lessee must provide the Lessor with keys to access all areas of the Premises.

9.4 Cost of re-entry

If the Lessor requires access to the Premises pursuant to its powers under this Lease, and is unable to access the Premises due to an unauthorised change in locks, the Lessor may take all such measures to enter the Premises and to re-secure the Premises, and the Lessee will bear all costs associated with such measures.

10. Maintenance, repair and cleaning

10.1 General

The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's fixtures and fittings) clean and in Good Repair.

10.2 Use of licensed trade persons

In discharging the obligations imposed on the Lessee under this **clause 10**, the Lessee shall where maintaining, replacing or repairing:

(a) any electrical fittings and fixtures;

(b) any plumbing;

(c) any air-conditioning fittings and fixtures; and

(d) any gas fittings and fixtures, in or on the Premises

use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.

10.3 Maintenance of motorcycle track

Without detracting from **clause 10.1**, the Lessee shall be solely responsible for maintenance of any motorcycle or motocross track of any kind situated on the Premises.

10.4 Maintain Surroundings

(1) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings including but not limited to any flora, gardens lawns, shrubs, hedges and trees;

(2) If any flora, trees or lawn dies the Lessee must replace the flora, trees or lawn at its own expense;

(3) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require; and

(4) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

10.5 Pest Control

The Lessee must keep the Premises free of any vermin or any other recognised pests and the cost of extermination will be borne by the Lessee.

10.6 Responsibility for Securing the Premises

(1) The Lessee must ensure the Premises, including Lessor's and Lessee's fixtures and fittings, are appropriately secured at all times.

(2) Subject to prior written approval from the Lessor, the Lessee may install a security system to the Premises, PROVIDED the Lessee:

(a) pays for all costs associated with the installation and ongoing monitoring of the security system; and

(b) provides the Lessor with access keys or alarm codes.

10.7 Repaint Premises

The Lessee must prior to expiry of both the Term and the Further Term and as general maintenance otherwise requires paint, paper or otherwise treat all such parts of the Premises as have been previously painted, or otherwise treated in a good and workmanlike manner and with good quality and suitable materials in colours first approved of by the Lessor.

10.8 Comply with all reasonable conditions

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.

10.9 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.

11. Alterations

11.1 Restriction

The Lessee must not without prior written consent from the Lessor or any other person from whom consent is required under this Lease or required under statute in force from time to time, including but not limited to the planning approval of the Lessor under a local planning scheme of the Lessor:

(a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or

(b) subject to the performance of the Lessee's obligations in **clause 11**, remove any flora 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.

11.2 Consent

(1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 11.1** the Lessor may:

(a) give such consent subject to conditions; and

(b) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and

(c) require that any works be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and

(2) If the Lessor consents to any matter referred to in **clause 11.1**:

(a) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and

(b) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

11.3 Cost of Works

All works undertaken under this **clause 11** will be carried out at the Lessee's expense.

11.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, 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.

12. Report to Lessor

The Lessee must immediately report to the Lessor:

(a) Vandalism

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 and of which the Lessee is aware or should be aware;

(b) Pollution

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;

(c) Notices, etc

All notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor;

(d) Defects

Any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

13. Provision of information

The Lessee AGREES to provide to the Lessor, upon the Lessor's request, where applicable:

(a) a copy of the Lessee's audited annual statement of accounts for each year;

(b) advice of any changes in its office holders or its rules of association during the Term; and

(c) any information on the Lessee's membership and other information on the Lessee reasonably required by the Lessor.

14. No assignment, subletting and charging

14.1 No Assignment or Subletting without Consent

The rights in this Lease are personal to the Lessee, and Lessee may not transfer, assign, sublet, assign or otherwise part with possession or any way dispose of any of its rights or obligations under this Lease without the written consent of the Lessor and the Minister for Lands, which consent may be withheld for any reason whatsoever in the absolute discretion of the Lessor or the Minister for Lands.

14.2 Property Law Act 1969

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

14.3 No Mortgage or Charge

The Lessee must not mortgage nor charge the leasehold interest in the Premises.

15. No caveat or other interest

15.1 No Caveat or other interest

The Lessee nor any person on behalf of the Lessee must not lodge any absolute caveat, subject to claim or any other interest including any lease, sublease, mortgage, charge over the Land or Premises or part thereof, without the prior written consent of the Lessor.

15.2 Removal of interest

If any caveat or other interest is lodged without the consent of the Lessor, the Lessee shall do all such things as are necessary to enable the caveat or other interest to be withdrawn, including but not limited to signing and lodging at Landgate:

(a) a withdrawal of any absolute caveat lodged by or behalf of the Lessee;

(b) a withdrawal of any caveat lodged by on or behalf of the Lessee and not withdrawn on Termination; and

(c) a surrender of the estate granted by this Lease where the Lease has been lawfully terminated.

15.3 Costs of Removal, Indemnity and Ratification

The Lessee shall be liable for all costs and expenses incurred in connection with the withdrawal or removal of any caveat or interest pursuant to **clause 15.2.**

16. Statutory obligations & notices

16.1 Comply with statutes

The Lessee must:

(a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;

(b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the Permitted Use;

(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 at the Premises.

16.2 Indemnity where Lessee fails to comply with clause 16.1

The Lessee indemnifies the Lessor against:

(a) failing to perform, discharge or execute any of the items referred to in **clause 16.1;** and

(b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 16.1**.

17. Obligations on expiry or termination of lease

17.1 Restore Premises

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

17.2 Remove Lessee's Property prior to Termination

Prior to Termination, the Lessee must remove from the Premises all property of the Lessee including the Lessee's signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

17.3 Lessor can Remove Lessee's Property on Re-Entry

If the Lessee fails to remove any such fixtures or fittings and any other chattels, stock or goods belonging to the Lessee in accordance with **clause 17.2** within fourteen (14) days from the determination of the Term, the Lessor may at its option:

(a) cause any such fixtures or fittings to be removed and stored at the cost of the Lessee and any such damage to be made good and any such alterations to be so re-altered and may recover the costs thereof from the Lessee as a liquidated debt payable on demand; or

(b) elect to treat any such fixtures or fittings and any other chattels, stock or goods of the Lessee to be deemed abandoned by the Lessee and such property shall then be and become the property of the Lessor absolutely.

17.4 Peacefully Surrender

On Termination the Lessee must:

(a) peacefully surrender and return to the Lessor the Premises in a condition consistent with the performance of the Lessee's Obligations under this Lease; and

(b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

17.5 Obligations to continue

The Lessee's obligations under this clause will continue, notwithstanding the end or Termination of this Lease.

LESSOR'S RIGHTS & OBLIGATIONS

18. Provide keys

If required to gain access to the Premises, the Lessor will provide the Lessee with one (1) set of keys for access to the Premises upon the signing of the Lease, but only if it has not already done so.

19. Lessor's right of entry

19.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor or any person authorised by the Lessor onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice:

(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 undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;

(ii) to carry out any survey or works which the Lessor considers necessary, including but not limited to works necessary to maintain the heritage value of the building in which the Premises are situated, 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 Obligations or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; or

(iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

19.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 19.1(d)(iv)** 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.

20. Limit of Lessor's liability

(1) The Lessor is only liable for breaches of the Lessor's Obligations set out in this Lease which occur while the Lessor remains the management body of the Land under the *Land Administration Act 1997*.

(2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Obligations due to any cause beyond the Lessor's control.

21. Building Insurance

The Lessor shall effect and keep effected policies of insurance in relation to any risk relating to the Lessor's ownership or interest in the Land and the Premises including, without limitation, insurance for fire, Lessor's fixtures and fittings. and the Lessee will reimburse the Lessor for any premiums or other costs arising therefrom. This insurance will, be deemed to constitute an "insurance required" for the purposes of **clause 6.1** of this Lease, except to the extent that **clause 6.1** requires the Lessee to effect the insurance or produce receipts thereof.

MUTUAL AGREEMENTS

22. Damage or destruction of premises

22.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee.

22.2 Dispute as to Abatement of Rent

Any dispute arising in relation to the abatement of rent pursuant to **clause 22.1** shall be referred to arbitration under the provisions of the *Commercial Arbitration Act 2012* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the award appears to have been overpaid.

22.3 Termination

In the event that fifty per cent (50%) or more of the gross lettable area of the building in which the Premises are situated are damaged or destroyed by fire or any like casualty the Lessor will have the option to be exercised by notice in writing delivered to the Lessee within sixty (60) days of such occurrence, to elect to cancel and terminate this Lease. The Term will terminate upon the third day after such notice is given and the Lessee must vacate the Premises and surrender the same to the Lessor but such termination will be without prejudice to the Lessor's rights in respect of any antecedent breach of this Lease.

23. Option to renew

23.1 Exercise of Option

If the Lessee at least one month, but not earlier than 6 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term as specified in **Item 3** of the Schedule and:

(a) all consents and approvals required by the terms of this Lease or at law have been obtained;

(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 Obligations; and

(c) the Lessor does not intend to redevelop or otherwise use the Premises in the proposed Further Term period;

the Lessor shall grant to the Lessee a lease for the Further Term as specified in **Item 3** of the Schedule at the Rent and on terms and conditions similar to this Lease other than this **clause 23** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate and, in respect of **subclause 23.1(c)**, the Lessor is not required to give any evidence or notice of its intention to use the Land provided that, in the event that the Lessee gives a Notice to grant the Further Term, such an intention is expressed to the Lessee at least one month prior to the date for commencement of the Further Term AND the Lessee indemnifies the Lessor against any claims for any loss or damage suffered by the Lessee as a result of the Lessor's refusal of a Further Term on the basis of **subclause 23.1(c)** however so arising**.**

24. 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 terms and conditions 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.

25. Default

25.1 Events of Default

A default occurs if:

(a) any Amounts Payable remain unpaid for 7 days after a Notice has been given to the Lessee that an amount is outstanding;

(b) the Lessee is in breach of any of the Lessee's Obligations for 14 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;

(c) where the Lessee is an association which is incorporated under the *Associations Incorporations Act 2015*, the association is wound up whether voluntarily or otherwise;

(d) where the Lessee is an association which is incorporated under the *Associations Incorporations Act 2015*, the Lessee passes a special resolution under the *Associations Incorporation Act 2015* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by 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 Premises on the Lessee's property;

(g) the Premises are vacated; or

(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 a rent and profits.

25.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 25.1** 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 24**,

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 Obligations or releasing the Lessee from liability in respect of the Lessee's Obligations.

25.3 Lessor May Remedy Lessee's default

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 Obligations,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, 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 cost and expenses of remedying each breach or default.

25.4 Acceptance of Amount 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 of the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

25.5 Essential Terms

Each of the Lessee's Obligations in **clauses 3** (Rent and Other Payments), **6** (Insurance), **7** (Indemnity), **8** (Use), **10** (Maintenance, Repair and Cleaning), **14** (No Assignment, Subletting and Charging) and **28** (Goods and Services Tax) is an essential term of this Lease but this **clause 25** does not mean or imply that there are no other essential terms in this Lease.

25.6 Breach of Essential Terms

If the Lessee breaches an essential term 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 term;

(b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and

(c) the Lessee AGREES with the Lessor that if the Term is determined:

(i) for breach of an essential term 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 lapse 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 re-letting or attempting to re-let the Premises;

(d) the Lessee agrees that the obligation set out in this **clause 25.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease; and

(e) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

26. Disputes

26.1 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 2012* and the Lessor and the Lessee may each be represented by a legal practitioner.

26.2 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 monies paid.

27. Consents

27.1 Western Australian Planning Commission's Consent

If for any reason whatsoever this Lease requires the consent of the Western Australian Planning Commission or other consent under the *Planning and Development Act 2005*, then this Lease is made expressly subject to and conditional on the granting of that consent in accordance with the provisions of the *Planning and Development Act 2005*.

27.2 Minister for Lands Consent

(1) The grant of this Lease is made expressly subject to and conditional on the consent of the Minister for Lands to this Lease pursuant to the provisions of the *Land Administration Act 1997*.

(2) The parties acknowledge that a copy of the consent of the Minister for Lands is attached at **Annexure B**.

28. Goods and Services Tax

28.1 Lessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the lease of the Premises or any goods, services or other Taxable Supply supplied under this Lease then, unless the Lessor is liable for the payment of a given Taxable Supply, as from the date of any such introduction or application:

(a) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and

(b) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

28.2 Increase in GST

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with **clause 28.1.**

28.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to **clause 28.2**, the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

29. Additional terms and conditions

Each of the terms and conditions (if any) specified in **Item 9** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

GENERAL PROVISIONS

30. Notice

30.1 Form of Delivery

A Notice to a person must be in writing and may be given or made:

(a) by a delivery to the person personally; or

(b) by addressing it to the person 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.

30.2 Service of Notice

A Notice to a person 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 30.1**, 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 30.1**, on the fourth business day following the date of posting of the Notice.

30.3 Signing of Notice

A Notice to a person 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; or

(c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government; or

(d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

31. Amendments to Lease

Subject to such consents as are required by this Lease or at law, this Lease may be varied by the agreement of the parties in writing.

32. Waiver

32.1 No General Waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of 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. 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.

34. Statutory powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

35. Further assurance

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

36. 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.

37. 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 terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

38. 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.

DEFINITIONS & INTERPRETATION

39. Definitions

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

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 consent or implied consent of any person mentioned in paragraph (a);

Basic Consideration means all consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

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;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat;

Further Term means each further term specified in **Item 3** of the Schedule;

Good Repair means good and substantial tenantable repair and in clean, good working order and condition;

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Input Tax Credit has the meaning that it bears in section 195-1 of the GST Act;

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, which rate cannot exceed the rate prescribed by, and imposed in accordance with, section 6.13 of the *Local Government Act 1995*;

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

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

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

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

Loss means any loss, cost (including legal costs), expense, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual prospective or contingent or any fine or penalty;

Management Order means Management Order M131388 made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of "Recreation and Bush Fire Brigade Depot" with the power to lease for a term not exceeding 21 years;

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 Use means the use stipulated in **Item 6** of the Schedule;

Premises means the premises described at **Item 1(b)** of the Schedule;

Rent means the rent specified in **Item 5** of the Schedule;

Rent Review Date means a date identified in **Item 8** of the Schedule;

Schedule means the Schedule to this Lease;

Tax Invoice has the meaning which it bears in section 195-1 of the GST Act;

Taxable Supply has the meaning which it bears in section 195-1 of the GST Act;

Term means the term of years specified in **Item 2** of the Schedule and any Further Term where the context permits; and

Termination means expiry by lapse of time or sooner determination of the Term or any period of holding over.

40. Interpretation

In this Lease, unless expressed to the contrary:

(a) Words using:

(i) the singular include the plural;

(ii) the plural include the singular; and

(iii) any gender includes each gender;

(b) A reference to:

(i) a natural person includes a body corporate or local government; and

(ii) a body corporate or local government includes a natural person;

(c) A reference to a professional body includes a successor to or substitute for that body;

(d) A reference to 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;

(e) A reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;

(f) A reference to a right includes a benefit, remedy, discretion, authority or power;

(g) A reference to 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;

(h) A reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to:

(i) both express and implied provisions and terms; and

(ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;

(i) A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;

(j) 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;

(k) If a Party comprises two or more persons the obligations and agreements on their part bind 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;

(l) The agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include:

(i) an agreement not to permit that act or thing to be done or omitted to be done by an Authorised Person; and

(ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done;

(m) Except in the Schedule headings do not affect the interpretation of this Lease.

Schedule

Item 1: Land and Premises

(a) Land

Part Reserve 18944 being land more particularly described as:

(a) Lot 578 on Deposited Plan 149133 and being the whole of the land comprised in Crown Land Certificate of Title Volume LR3144 Folio 39; and

(b) Lot 643 on Deposited Plan 224064 and being the whole of the land comprised in Crown Land Certificate of Title Volume LR3144 Folio 40.

(b) Premises

That portion of the Land together with all buildings and improvements located thereon as depicted on the plan annexed hereto as **Annexure A**.

Item 2: Term

Ten (10) years commencing on 1 November 2026 and expiring on 31 October 2036

Item 3: Further Term

Ten (10) years commencing on 1 November 2036 and expiring on 31 October 2046

Item 4: Commencement Date

1 November 2026

Item 5: Rent

1 peppercorn payable upon demand

Item 6: Permitted Use

Motorcycle Track and Motorcycle Club Premises

Item 7: Public Liability Insurance

$20,000,000 (Twenty Million Dollars)

Item 8: Rent Review

Not Applicable

Item 9: Additional Terms and Conditions

1. Termination of Lease upon revocation of Management Order or change in Reserve purpose

If:

(a) the Management Order is revoked; or

(b) the purpose for which the Reserve is vested in the Lessor is changed (with or without the consent of the Lessor);

then the Lessor may terminate this Lease upon 30 days written notice to the Lessee.

2. Affiliation and Insurance

(1) Notwithstanding clause 6.1, the Lessee may, with the prior written approval of the Lessor, obtain public liability insurance cover for an event held by the Lessee through an active affiliation, membership or other recognised association with a motorcycle governing, sporting, representative, or regulatory body appropriate to the activities of the Lessee (**Governing Body**), including but not limited to Motorcycling Western Australia Inc (**MWA**).

(2) For the avoidance of doubt, to the extent the Lessee has not obtained public liability insurance cover through a Governing Body with the prior written approval of the Lessor, the Lessee itself must hold such public liability insurance cover in accordance with clause 6.1.

3. Track Licence

(1) The Lessee shall ensure that:

(a) any motorcycle track constructed on the Premises is inspected annually by MWA, or other Governing Body approved by the Shire, for compliance and approved; and

(b) it maintains a current, valid licence issued by MWA or other Governing Body approved by the Shire for the motorcycle track (**Licence**).

(2) The Lessee shall provide a copy of the Licence to the Lessor on an annual basis in conjunction with any required certificates of insurance and a completed Public Events Form. The Licence must be on display at all times during any event on the Premises and when individuals are riding motorcycles on the Premises.

Signing page

EXECUTED on the day of 2026

The **COMMON SEAL** of the **SHIRE OF JERRAMUNGUP** was hereunto affixed by authority of a resolution of the Council in the presence of:))))

President

(Print Full Name)

Chief Executive Officer

(Print Full Name)

THE **COMMON SEAL** of **JERRAMUNGUP DISTRICTS MOTORCYCLE CLUB INC.** ("the Association") was hereunto affixed pursuant to the constitution of the Association in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or her holds the office in the Association indicated under his or her name:

OFFICE HOLDER SIGN

Office Held:

Full Name:

Address:

OFFICE HOLDER SIGN

Office Held:

Full Name:

Address:

Annexure A – Plan of Premises



Annexure B – Consent of the Minister for Lands