

Council

RENEWAL OF LEASE - MOUNT BARKER TENNIS  
CLUB

Draft Lease

Meeting Date: 15 August 2017

Number of Pages: 24

**Dated 1 July 2017**

**SHIRE OF PLANTAGENET**

**AND**

**MOUNT BARKER TENNIS CLUB INCORPORATED**

**LEASE**

**Part of Lot 152 McDonald Avenue, Mount Barker**

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# LEASE

This Lease dated 1 July 2017

**PARTIES** SHIRE OF PLANTAGENET of Lowood Road Mount Barker, Western Australia ('the Lessor')

and

The person or persons described in Item 1 of Schedule 1 ('the Lessee')

## RECITALS

- A. The Lessor has agreed to lease the Premises to the Lessee on and subject to the terms and conditions of this Lease.
- B. The Parties acknowledge that the Premises and the granting of this Lease by the Lessor to the Lessee are for the benefit, use and enjoyment of the community in and around the Shire of Plantagenet.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

#### 1.1 Definitions

In this Lease, unless the contrary intention appears:

**'Commencement Date'** means the commencement date of the Term specified in Item 3 of Schedule 1;

**'Fixtures and Fittings'** includes fixtures, fittings, accessories, doors, windows, roof, guttering, furnishings, carpet, paintwork, equipment, locks and keys;

**'GST'** means a tax, impost or other duty raised on the supply of goods and services and imposed by the Commonwealth of Australia or a state or territory of the Commonwealth of Australia;

**'Land'** means the land described in Item 2 of Schedule 1;

**'Lessee'** if only one Lessee is a party means the Lessee and the executors, administrators and permitted assignees of the Lessee and if there are two or more Lessees parties means the Lessees and each of them and their and each of their executors, administrators and permitted assigns and if the Lessee or any of the Lessees is a corporation includes the successors and permitted assigns of the Lessee;

**'Lessor'** if only one Lessor is a party means the Lessor and the executors, administrators and assigns of the Lessor and if there are two or more Lessors parties hereto means the Lessors and each of them and their and each of their executors,

administrators and assigns and if the Lessor or any of the Lessors is a corporation includes the corporation and its successors and assigns;

**‘Permitted Purpose’** means the use of the Premises for the purpose specified in Item 6 of Schedule 1;

**‘Premises’** means the premises described in Item 2 of Schedule 1 and includes all improvements and buildings on the premises at the Commencement Date erected or carried out at anytime during the Term and whether erected or carried out by the Lessor or the Lessee;

**‘Rate of Interest’** means the general maximum rate of interest charged from time to time by the Lessor on outstanding rates;

**‘Rent’** means the Rent payable by the Lessee pursuant to this Lease;

**‘Term’** means the term of this Lease as specified in Item 3 of Schedule 1 commencing on the Commencement Date and any shorter period in the event of the early determination of the Term.

## **1.2 Interpretation**

In this Lease, unless the contrary intention appears:

- (a) words suggesting the singular include the plural and vice versa;
- (b) words suggesting any gender include any other gender;
- (c) reference to a person include a company, corporation, and unincorporated or incorporated association or statutory authority;
- (d) references to clauses, paragraphs, subparagraphs and Schedules are to clauses, paragraphs, and subparagraphs of, and schedules to, this Lease as amended from time to time in accordance with the terms of this Lease;
- (e) headings used for clauses, paragraphs, subparagraphs, Schedules and the table of contents are for ease of reference only and is not to affect the interpretation of this Lease;
- (f) references to laws include any modification or re-enactment of those laws, or any legislative provisions substituted for such laws, and all orders, local laws, planning schemes, by-laws, regulations and other statutory instruments issued under those laws;
- (g) where the words ‘includes’ or ‘including’ are used, they are taken to be followed by the words ‘without limitation’;
- (h) a reference to any body is:
  - (i) if that body is replaced by another organisation, taken to refer to that organisation; and

- (ii) if that body ceases to exist, taken to refer to the organisation which most nearly or substantially serves the same purposes or objects as that body; and
- (iii) all dollar amounts specified in this Lease are in Australian dollars.

## **2. LEASE**

### **2.1 Lease**

The Lessor grants a lease to the Lessee and the Lessee takes a lease of the Premises on and subject to the terms of this Lease.

### **2.2 Term**

The Premises are held by the Lessee as tenant for the Term commencing on the Commencement Date specified in Item 3 of Schedule 1 and expiring on the expiry date specified in Item 3 of Schedule 1 the Lessee paying therefore the Rent payable in the manner provided in this Lease.

### **2.3 Rent**

- (1) The Lessee must pay to the Lessor for each year the annual rent specified in Item 4 of Schedule 1.
- (2) The Rent is payable in the manner set out in Item 5 of Schedule 1.

## **3. LESSEE'S OBLIGATIONS**

### **3.1 Rates and taxes**

The Lessee must punctually pay all rates, assessments, levies or taxes levied or assessed or to be levied or assessed by the Commonwealth, the State, the local government, any water supply authority, any sewerage authority or by any other authority whether statutory, governmental, or otherwise which:

- (a) are at any time during the Term or any holding over to any extent charged on the Premises or on the Lessor in respect of the Premises or both; or
- (b) arise out of or by reason of the method or kind of business carried on by the Lessee.

### **3.2 Services**

The Lessee must punctually pay for all water, gas, electricity, telephone, rubbish and other utility services which are either provided to or used on the Premises.

### **3.3 Maintenance**

- (1) The Lessee must keep and maintain every part of the Premises and all lighting

and electrical installations and all drainage and septic systems and all other fixtures and fittings in good and substantial repair, order and condition, fair wear and tear excepted.

- (2) The Lessee need not carry out repairs of a structural nature unless it has become necessary because of any actions, whether negligent or deliberate, of the Lessee or those for whom the Lessee is responsible.

### **3.4 Cleaning**

The Lessee must keep and maintain the Premises well cleansed and drained in good sanitary condition and properly disinfected, free from rubbish, refuse and disused material of any kind and the Lessee must observe, perform, discharge, execute and take such sanitary measures and precautions and subject to clause 3.25, construct such works and make such amendments, alterations and additions to the Premises at any time during the Term as are required by or under any written law (excluding works of a structural nature) .

### **3.5 Security**

- (1) All closed circuit televisions cameras and equipment (if installed) must be kept fully operational at all times and shall be maintained and/or repaired at the Lessees' expense.
- (2) A minimum of seven days' images must be stored and shall be made available to the Lessor and/or police on request.

### **3.6 Locks**

No Bi Lock ® lock shall be removed or altered in any way.

### **3.7 Alarm System**

Any alarm system installed on the Premises shall be maintained and kept fully operational at all times, including a monitored service which is operated and maintained at the Lessee's expense.

### **3.8 Make good damage**

At the Lessee's own expense from time to time the Lessee must make good any breakage, defect or damage to the Premises or any adjoining premises or facilities or any other property caused by want of care, misuse or abuse on the part of the Lessee or the Lessee's employees agents, contractors, invitees, licensees, sub-tenants or other persons claiming through or under the Lessee or otherwise occasioned by any breach or default of the Lessee under this Lease.

### **3.9 Repaint**

Without limiting the generality of clause 3.3, at the Lessee's own expense, the Lessee must paint, colour, varnish and paper to the reasonable satisfaction of the Lessor all such parts of the Premises as have been previously painted, coloured, varnished or



papered on expiration of the Term.

### **3.10 Entry by Lessor to view and to repair**

- (1) The Lessee must permit the Lessor, the Lessor's architects, agents and contractors at all reasonable times upon 24 hours written notice to enter into and upon the Premises in order to view and examine the state of repair, order and condition and to leave upon the Premises notice of any lack of repair, order, condition, neglect or defect for which the Lessee is liable and requiring the Lessee to make good the same within the time specified in the notice and the Lessee must make good the same in accordance with the notice to the satisfaction of the Lessor.
- (2) The Lessee must permit the Lessor, the Lessor's agents and contractors at all reasonable times and, in the case of emergency, at any time to enter into and remain upon the Premises with all necessary plant, equipment and materials to carry out any works or make any repairs or alterations or additions to the Premises.

### **3.11 Abatement of nuisances**

- (1) The Lessee must not do or omit to do any act matter or thing which may be or be deemed to be a nuisance within the meaning of the Health Act 1911 or any other Act or under any planning scheme, local law, regulation or written law applicable to the Premises or the use or occupation of the Premises by the Lessee and the Lessee must immediately abate any such nuisance or alleged nuisance.
- (2) The Lessee must ensure that the Premises are not used in any manner which may be or become a nuisance, disturbance or annoyance to the quiet and comfort of any occupier of any premises in the vicinity of the Premises and on being required to do so by the Lessor or any employee or agent of the Lessor the Lessee must immediately abate the nuisance, disturbance or annoyance.

### **3.12 Pests**

The Lessee must keep the Premises free of ants, termites, rodents, pests and vermin.

### **3.13 No Smoking**

The Lessee shall ensure that the Premises remain a non smoking area at all times.

### **3.14 No living in premises**

The Lessee must not use or permit the use of any part of the Premises for living or sleeping or for any unlawful purpose.

### **3.15 Defacing**

The Lessee must not, without the prior written consent of the Lessor, mark, paint, drill, write on or in any way deface any wall, ceiling, floor, wood, stone or ironwork of the Premises.

### **3.16 Rubbish**

The Lessee must not permit any rubbish or garbage to accumulate on the Premises unless confined in suitable containers which are located so as not to be visible to members of the public.

### **3.17 Disorderly behaviour**

The Lessee must use all reasonable endeavours to prevent disorderly behaviour and indecent language at the Premises.

### **3.18 Compliance with written laws**

The Lessee must comply with, carry out and perform the requirements of the Local Government Act, the Health Act and any other Act, ordinance, town planning scheme, local law, regulation or written law or of any notice, requisition or order under a written law applicable to the Premises or the use or occupation of the Premises.

### **3.19 Permitted purpose and operation of Lessee's affairs**

- (1) The Lessee must use the Premises only for the purpose specified in Item 6 of Schedule 1 or for any other purpose first approved in writing by the Lessor.
- (2) The Lessee must at all times conduct its affairs for the purpose specified in Item 6 of Schedule 1 in a first class businesslike and reputable manner and with due diligence and efficiency.

### **3.20 Insurances**

- (1) The Lessee must, at the Lessee's expense, effect and keep current, with an insurance company approved by the Lessor the following insurances in relation to the Premises:

#### **Public risk**

- (a) A policy covering public risk which:
  - (i) is in the name of the Lessee and provides for a minimum cover of ten million dollars (\$20,000,000.00) for each accident, claim or event or such higher amount as the Lessor reasonably specifies; and
  - (ii) extends to cover any liability for the death of, or injury to, any person or damage to any person's property sustained when such person is using or entering or near the Premises, or sustains the

injury or damage as a result of an act or omission of the Lessee, its agent, licensee, employee or representative.

#### **Glass**

- (b) A policy in the name of the Lessee and the Lessor covering the breakage of any glass on the Premises including any plate glass. The Lessee agrees that all money received under the insurance policy will be expended in reinstating the damaged glass. If such money is insufficient to meet the cost of the reinstatement the Lessee must reinstate the damaged glass at its own expense to the Lessor's satisfaction;

#### **Fittings and chattels**

- (c) A policy covering the Lessee's fittings, fixtures and chattels contained in or about the Premises for its full insurable value against loss or damage resulting from fire and extraneous risks including but not limited to water, storm and rainwater damage.
- (2) The Lessee must give to the Lessor at least 30 days' written notice before either cancellation of a policy or a reduction in its level or extent of cover.

### **3.21 Evidence of insurance cover**

- (1) Before taking possession of the Premises, the Lessee must deliver the insurance policies required under this Lease to the Lessor.
- (2) The Lessee must give satisfactory evidence to the Lessor that the policies have been renewed within 7 days after the expiration of each policy term.

### **3.22 Not to void insurances**

The Lessee must not at any time do or allow anything which may either render the insurances on the Premises or any part of it void or voidable.

### **3.23 Compliance with insurance regulations**

- (1) The Lessee must comply with insurance, sprinkler and fire alarm regulations as they relate to the use of the Premises.
- (2) The Lessee must pay to the Lessor the cost of any alterations to any sprinkler or fire alarm installation which may become necessary by reason of the non-compliance by the Lessee with the regulations of the Insurance Council of Australia or the requirements of the Lessor's insurer or both of them.
- (3) The Lessee must pay to the Lessor on demand the Lessor's costs of carrying out:
  - (a) any testing and servicing of fire equipment and systems and of electrical equipment which may be required by law or recommended by

any relevant authority; and

- (b) any alteration to any fire equipment and systems which may become necessary by reason of non-compliance by the Lessee with the requirements of any insurer, relevant authority or local government.
- (4) Subject to the preceding paragraphs of this clause, the Landlord is responsible for the cost of installing any additional or new sprinkler or fire alarm system which may become necessary by reason of a change or alteration to the regulations or legislation governing fire control in the Premises, the regulations of the Insurance Council of Australia or the requirements of the Lessor's insurer.

### **3.24 Indemnity**

- (1) The Lessee must indemnify the Lessor and keep the Lessor indemnified from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever ('Claim') which the Lessor may suffer or incur in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in upon or at the Premises or the use by the Lessee of the Premises or to any person or the property of any person using or entering or near any entrance to the Premises or occasioned (wheresoever it may occur) wholly or in part by any act, neglect, default or omission by the Lessee its agents, contractors, servants, workmen, customers, members or any other person or persons using or upon the Premises with its consent or approval expressed or implied, unless such Claim is caused directly or indirectly by the action or omission of the Lessor.

### **3.25 Alterations and improvements**

The Lessee must not, without the prior written consent of the Lessor, make or permit to be made any alteration in or additions to the Premises or remove from the Premises any improvement and the Lessee must not cut maim or injure or suffer to be cut maimed or injured any of the walls, floors, ceilings, plumbing, gas or electrical fixture or fittings or timbers.

### **3.26 Notice of defects**

The Lessee must give to the Lessor immediate notice in writing of any damage to or defect in the Premises or the water or sewerage pipes, gas pipes, electrical light fixtures or any plant fittings or equipment in the Premises.

### **3.27 Sale and storage of alcohol**

- (1) The Lessee must not sell or permit the sale of any alcohol or alcoholic beverage on the Premises except with the prior consent in writing of the Lessor and in accordance with a licence under the Liquor Control Act 1988.
- (2) The Lessee must not store any quantity of alcohol or alcoholic beverage on the Premises except in accordance with the prior consent in writing of the Lessor.

### **3.28 Assignment or subletting**

- (1) The Lessee must not assign, sublet or part with the possession of the Premises or any part of the Premises and the Lease without the prior written consent of the Lessor.
- (2) Sections 80 and 82 of the Property Law Act 1969 are expressly excluded.
- (3) The Lessee must not mortgage, encumber or charge the Premises or the Lease.

### **3.29 Signs**

The Lessee must not, without the prior written consent of the Lessor, affix or exhibit or permit to be affixed to or exhibited upon any part of the exterior of the Premises or in any place visible from outside the Premises any placard, sign, notice, poster, hoarding or advertisement.

### **3.30 Annual financial accounts**

Where the Lessee is an incorporated association, the Lessee must, upon receipt of a written request by the Lessor, immediately give to the Lessor a copy of the annual financial accounts submitted to the members of the Lessee at the annual general meeting.

### **3.31 Legal costs**

- (1) Each party shall bear their own costs of and incidental to the preparation, negotiation and execution of this Lease.
- (2) Each party shall bear their own cost in obtaining legal advice on the document.

### **3.32 Lessee to make good**

- (1) At the expiration or sooner determination of this Lease:
  - (a) the Lessee must yield up the Premises to the Lessor in the condition required by this Lease;
  - (b) the Lessee must remove from the Premises all fixtures, fittings and chattels brought onto the Premises by or for the use of the Lessee except for any structural improvements and any fixtures, fittings and chattels provided for the use of the Lessee and which the Lessor determines should remain in the Premises. The Lessee must not do or allow any damage to the Premises in such removal. If however any damage occurs the Lessee will immediately make it good;
  - (c) the Lessee must remove any lettering, signs, names, advertisements and notices erected, painted, displayed or affixed onto or within the Premises and make good any damage caused by reason of such erection, painting, displaying, affixing or removal. If the Lessee

defaults under this clause the Lessor may remove and make good at the Lessee's expense; and

- (d) the Lessee must make good any damaged or missing loose items as listed in Schedule 3 to equal quantity and quality.
- (2) If the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option do either or both of the following:
  - (a) remove and store any of them in such a manner as the Lessor determines at the cost of the Lessee; and
  - (b) treat them as if the Lessee had abandoned its interest in them and they had become the property of the Lessor may then deal with them in such manner as the Lessor determines. If the Lessor sells them then the Lessor need not account to the Lessee for the proceeds of sale but may apply the proceeds of sale as the Lessor sees fit.

### **3.33 No registration or absolute caveat**

- (1) The Lessee must not register this Lease or lodge any absolute caveat in respect of the Premises.
- (2) If any absolute caveat is registered or lodged or the Lease is registered by the Lessee, then in consideration of the Lessor having granted this Lease to the Lessee, the Lessee hereby irrevocably appoints the Lessor and each and every one of the officers or agents of the Lessor jointly and severally for the Term and for a period of 6 months after the Term the agent and attorney of the Lessee to surrender or withdraw the lease or caveat the cost of which must be borne and paid by the Lessee.

## **4. QUIET POSSESSION**

If the Lessee pays the Rent and performs its covenants contained in this Lease the Lessee may peaceably possess and enjoy the Premises for the Term without any interruption from the Lessor or any person lawfully claiming through, from or under its subject always to the rights, powers, remedies and reservations of the Lessor contained in this Lease.

## **5. MUTUAL AGREEMENTS**

### **5.1 Default**

If:

- (a) the Rent or any part of it is in arrears for 14 days even if it has not been formally demanded;
- (b) the Lessee breaches or does not comply with any provision whether expressed or implied in this Lease;

- (c) repairs required by any notice given by the Lessor under this Lease are not completed within the time specified in the notice;
- (d) the Lessee defaults in the payment of any moneys owing to the Lessor other than rent whether under this Lease or any other account after 14 days written demand for payment has been made by the Lessor on the Lessee;
- (e) the Lessee is a corporation and an order is made or a resolution is passed for the winding up of the Lessee except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent is not to be unreasonably withheld;
- (f) the Lessee is a corporation and ceases or threatens to cease to carry on business or goes into liquidation whether voluntary or otherwise or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (g) the Lessee is a corporation and is placed under official management or an administrator is appointed under or pursuant to the provisions of the relevant Corporations Law or enters into a composition or scheme of arrangement;
- (h) the interest of the Lessee under this Lease is taken in execution;
- (i) the Lessee or any person claiming through the Lessee conducts any business from the Premises after the Lessee has committed an act of bankruptcy;
- (j) the Lessee abandons or vacates the Premises; or
- (k) the Lessee being an incorporated association:
  - (i) is wound up or resolves to be dissolved or wound up voluntarily;
  - (ii) without the prior written consent of the Lessor, changes its name, objects or constitution;
  - (iii) is convicted of an offence under the Associations Incorporations Act 1987,

then the Lessor may in addition to its other powers either:

- (i) re enter on the Premises or any part of them with force if necessary and eject the Lessee and all other persons from and repossess the Premises; or
- (ii) by notice in writing to the Lessee determine this Lease,

or both.

## **5.2 Lessor's powers**

- (1) If the Lessor exercises its powers under clause 5.1, this Lease is to terminate but the Lessee is not released from liability for any breach of or non-compliance with any provision of this Lease and the remedies available to the Lessor for recovery of arrears of rent or for prior breach or non-compliance are not affected.
- (2) On termination if the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option do either or both of the following:
  - (a) remove and store any of them in such a manner as the Lessor determines at the cost of the Lessee; and
  - (b) if the Lessee does not remove or recover them within a month after termination of the Lease, treat them as if the Lessee had abandoned its interest in them and they had become the property of the Lessor and the Lessor may then deal with them in such a manner as the Lessor determines. If the Lessor sells them, it need not account to the Lessee for the proceeds of sale, but may apply the proceeds of sale as it sees fit.

## **5.3 No Lessor Representation**

- (1) The Lessor does not warrant or represent that:
  - (a) the Premises are suitable for the Permitted Purpose;
  - (b) the Lessor's Fixtures and Fittings and services are suitable for the Permitted Purpose;
  - (c) the Premises may lawfully be used for the Permitted Purpose; or
  - (d) zoning of the Premises will allow the Premises to be used for the Permitted Purpose,and the Lessee agrees that, before signing the Lease, the Lessee made its own inquiries about zoning.
- (2) Any warranty as to the suitability of the Premises implied by law is expressly negatived.

## **5.4 Damage to the Premises**

- (1) If the Premises are destroyed or damaged so as to render them, in the opinion of the Lessor, wholly or partially unfit for the Permitted Purpose then the Lessor may, on giving one month's notice in writing to the Lessee, terminate this Lease.
- (2) Termination under subclause (1) is without prejudice to any rights which may have accrued to either party prior to termination.



## **5.5 Lessor not Liable for Interruption of Services**

Despite any implication or rule of law to the contrary, the Lessor is not liable to the Lessee (except for any wilful or negligent acts of the Lessor or its officers, servants or agents) for any loss or damage suffered by the Lessee through:

- (a) any malfunction, failure to function or interruption of or to the water, gas or electricity services, the air-conditioning equipment, fire equipment or any of the appurtenances contained in the Premises; or
- (b) the blockage of any sewers, water, drains, gutters, downpipes or storm water drains from any cause, and

the Lessee is not entitled to terminate the Lease for any such reason nor have any right of action or claim for compensation or damages against the Lessor in respect of such failure.

## **5.6 Entry by Lessor**

If the Lessee fails to duly and punctually observe or perform any provision of this Lease the Lessor is entitled to carry out the observance or performance of the provision and for that purpose the Lessor or the Lessor's architects, servants agent or workmen may if necessary enter the Premises and the cost and expense incurred in the observance or performance together with interest thereon at a rate of 2% per annum greater than the Rate of Interest is to be a debt due by the Lessee to the Lessor and is to be payable on demand and may be recovered by the Lessor in the same manner as if such debt were for rent due under this Lease in arrears by action in law and such cost expense and interest is to be a charge on the term.

## **5.7 Works by Lessor**

- (1) The Lessor may by itself or its agents at all reasonable times upon 24 hours written notice, or immediately in the case of an emergency, enter the Premises or any part of the Premises for any one or more of the following purposes:
  - (a) complying with the terms of any legislation affecting the Premises and any notices served on the Lessor or Lessee by any statutory, licensing, municipal or other competent authority;
  - (b) carrying out any repairs, alterations or works of a structural nature;
  - (c) installing any services such as air-conditioning apparatus, automatic fire sprinklers, gas pipes, water pipes, drainage pipes, cables or electrical wiring;
  - (d) making any repairs which the Lessor may think necessary to the Premises;
  - (e) making any improvements or alterations to the adjoining Premises which the Lessor may consider necessary;

- (f) taking inventories of fixtures; or
  - (g) exercising the powers and authorities of the Lessor under this Lease.
- (2) Except where the works referred to in this clause are carried out by the Lessor due to a default of the Lessee's obligations pursuant to this Lease, the Lessor is responsible for the costs of carrying out those works.
  - (3) In carrying out the works referred to in this clause the Lessor is not to cause unnecessary interference with the use of the Premises by the Lessee.

## **5.8 Holding over**

If the Lessee holds over the Premises upon the expiry of the Term then a tenancy from year to year is not to be presumed but in that event the tenancy is a tenancy from week to week at the rent then payable but otherwise upon the terms and conditions contained in this Lease insofar as they are applicable and is determinable at the expiration of one week's notice by either party to the other at any time.

## **5.9 No waiver**

- (1) No waiver (whether express or implied) by the Lessor of any breach of any covenant, obligation or provision contained or implied in this Lease is to operate as a waiver of any other breach of the same or any other covenant, obligation or provision contained or implied in this Lease and it does not operate as a waiver of the essentiality of any obligation which by virtue of this Lease is an essential term of this Lease.
- (2) In particular, any demand by the Lessor for, or any acceptance by the Lessor of, rent or other moneys payable under this Lease does not constitute a waiver by the Lessor of any breach of any provision in this Lease and does not create any new tenancy between the parties.
- (3) No custom or practice which has grown up between the parties in the course of administering this Lease is to be construed so as to waive or lessen the right of the Lessor to insist on the performance by the Lessee of all or any of the Lessee's obligations under this Lease.

## **5.10 No warranty**

- (1) This document embodies the whole transaction of leasing made by this Lease and all warranties, conditions and representations collateral or otherwise concerning the leasing whether written, oral, express or implied and whether consistent with this document or not are cancelled.
- (2) This Lease may be amended only by instruments in writing executed by the Lessor and the Lessee.

### **5.11 Lessor's right to install services**

The Lessor reserves to itself and to its employees agents and contractors the right to enter upon the Premises at all reasonable times with all necessary materials and appliances to erect, make, excavate, lay, or install in on over or under the Premises any posts, drains pipes, conduits, cables wires, or other things requisite for any existing or future service to the Premises together with the like right to enter upon the Premises for the purpose of inspecting, removing, maintaining, altering or adding to any such things relation to an existing service to the Premises and, in each such case the Lessor is to cause as little inconvenience and damage to the Lessee as is practicable in the circumstances.

### **5.12 Execution of works by Lessor**

If the Lessor desires or is required to:

- (a) execute any works which by law the Lessor is bound and has been required to execute on the Premises; or
- (b) build any further storeys upon any building; or
- (c) alter, repair, add to or re-build any part of the Premises; or
- (d) construct, erect, lay down, alter, repair, cleanse or maintain any drain, ventilator shaft, water pipe, electric wires or gas pipes in connection with or for the accommodation of the Premises or any adjoining property; or
- (e) underpin; or
- (f) reinstate or re-build in case of fire,

then and in any such case the Lessor may with or without employees, agents, workmen and contractors and appliances enter upon the Premises and carry out such works doing as little damage to the Premises as is reasonably possible and restoring them without unreasonable delay but without making compensation for any damage or inconvenience to the Lessee provided that in each case the Lessor is to cause as little inconvenience and damage to the Lessee as is practicable in the circumstances.

### **5.13 Notices**

- (1) Any notice or demand from the Lessor to the Lessee is to be taken to be duly served if left for the Lessee on the Premises, if mailed by prepaid letter addressed to the Lessee at the address set in this Lease or if sent by facsimile machine to the Lessee's facsimile machine.
- (2) Any notice or demand from the Lessee to the Lessor is to be taken to be duly served if mailed by prepaid letter addressed to the Lessor at its office.
- (3) A notice or demand posted mailed is to be taken to be duly served at the expiration of 48 hours after the time of posting mailing and any notice given by one party to the other may be signed on behalf of the party giving it by a director, secretary, chief executive officer or solicitor.

## 5.14 Additional terms, covenants and conditions

The additional terms, covenants and conditions in Schedule 2 ('Special Terms') are taken to be incorporated in, and form part of, this Lease and if there is any inconsistency between the Special Terms and any provision of this Lease then the Special Terms prevail to the extent of the inconsistency.

## 6. ESSENTIAL TERMS

The Lessee and the Lessor agree that each of clauses 2.3, 3.1, 3.2, 3.3, 3.4, 3.19, 3.20 and 3.28 and Schedule 2 are essential terms of this Lease, and any breach or failure by the Lessee to comply with any of those clauses entitles the Lessor to all rights and remedies available to it in respect of breach of or failure to comply with an essential term.

## 7. GST

- (1) If GST is imposed or levied in respect of any supply by a party under or in accordance with this Lease (including the supply of the Premises or the supply of any goods, services, rights, benefits or other things) then the party making the supply may recover the GST Amount from the party receiving the supply in addition to the Consideration. The party making the supply must provide such invoices to the party receiving the supply as are required pursuant to the GST Legislation.

- (2) In this clause:

**'Consideration'** means any amount or consideration payable or to be provided pursuant to any provision of this Lease other than this clause;

**'GST'** means any form of goods and services tax or similar value added tax;

**'GST Amount'** means the Consideration (after deducting the GST Exempt Component) multiplied by the Rate;

**'GST Exempt Component'** means any part of the Consideration which solely relates to a supply that is free or exempt from the imposition of GST;

**'GST Legislation'** means A New Tax System (Goods and Services Tax) Act 1999 and any other legislation or regulation which imposes, levies, implements or varies a GST or any applicable rulings issued by the Commissioner of Taxation;

**'Rate'** means the rate at which GST Legislation from time to time imposes or levies GST on the relevant supply under this Lease;

**'Supply'** includes supply as defined under GST Legislation.

## SCHEDULE 1

<b>Item 1</b>	<b>Lessee's Name and Address:</b>	Mount Barker Tennis Club Inc. Post Office Box 266 Mount Barker WA 6324
<b>Item 2</b>	<b>Land:</b>	Part of Lot 152 McDonald Avenue, Mount Barker (as shown hatched in red on the attached map)
	<b>Premises:</b>	The buildings and land
<b>Item 3</b>	<b>Term:</b>	Five Years
	<b>Commencement Date:</b>	1 July 2017
	<b>Expiry Date:</b>	30 June 2022
<b>Item 4</b>	<b>Annual Rent:</b>	\$1.00 per annum if and when demanded
<b>Item 5</b>	<b>Manner of payment of rent:</b>	Cheque Direct Deposit In Person at Administration Office
<b>Item 6</b>	<b>Permitted Purpose:</b>	Tennis Club

## **SCHEDULE 2**

### **ADDITIONAL TERMS AND CONDITIONS**

1. Council would expect the Mount Barker Tennis Club Inc. to manage the use of the courts to ensure that the courts are used as extensively as possible by the Club and the general public.

DRAFT

**EXECUTED by the parties**

**THE COMMON SEAL of SHIRE OF )**  
**PLANTAGENET** was hereunto affixed pursuant )  
to a resolution of the Council in the presence of: )

---

Shire President

---

Chief Executive Officer

**On behalf of MOUNT BARKER TENNIS  
CLUB INCORPORATED:**

---

President

---

Vice-President

---

Secretary





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The Shire of Plantagenet does not warrant the accuracy of information in this publication and any person using or relying upon such information does so on the basis that the Shire of Plantagenet shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.

11/07/2017

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Council

RENEWAL OF LEASE – WEST PLANTAGENET  
PONY CLUB INCORPORATED

Draft Lease

Meeting Date: 15 August 2017

Number of Pages: 23

**Dated 27 September 2017**

**SHIRE OF PLANTAGENET**

**AND**

**WEST PLANTAGENET PONY CLUB INCORPORATED**

**LEASE**

**RESERVE NO. 13892, 9020 & 13852  
MARTAGALLUP ROAD, KENDENUP**

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## LEASE

This Lease dated 27 September 2017

**PARTIES** SHIRE OF PLANTAGENET of Lowood Road Mount Barker, Western Australia ('the Lessor')

and

The person or persons described in Item 1 of Schedule 1 ('the Lessee')

### RECITALS

- A. The Lessor has agreed to lease the Premises to the Lessee on and subject to the terms and conditions of this Lease.
- B. The Parties acknowledge that the Premises and the granting of this Lease by the Lessor to the Lessee are for the benefit, use and enjoyment of the community in and around the Shire of Plantagenet.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

In this Lease, unless the contrary intention appears:

**'Commencement Date'** means the commencement date of the Term specified in Item 3 of Schedule 1;

**'Fixtures and Fittings'** includes fixtures, fittings, accessories, doors, windows, roof, guttering, furnishings, carpet, paintwork, equipment, locks and keys;

**'GST'** means a tax, impost or other duty raised on the supply of goods and services and imposed by the Commonwealth of Australia or a state or territory of the Commonwealth of Australia;

**'Land'** means the land described in Item 2 of Schedule 1;

**'Lessee'** if only one Lessee is a party means the Lessee and the executors, administrators and permitted assignees of the Lessee and if there are two or more Lessees parties means the Lessees and each of them and their and each of their executors, administrators and permitted assigns and if the Lessee or any of the Lessees is a corporation includes the successors and permitted assigns of the Lessee;

**'Lessor'** if only one Lessor is a party means the Lessor and the executors, administrators and assigns of the Lessor and if there are two or more Lessors parties hereto means the Lessors and each of them and their and each of their executors,

administrators and assigns and if the Lessor or any of the Lessors is a corporation includes the corporation and its successors and assigns;

**‘Permitted Purpose’** means the use of the Premises for the purpose specified in Item 6 of Schedule 1;

**‘Premises’** means the premises described in Item 2 of Schedule 1 and includes all improvements and buildings on the premises at the Commencement Date erected or carried out at anytime during the Term and whether erected or carried out by the Lessor or the Lessee;

**‘Rate of Interest’** means the general maximum rate of interest charged from time to time by the Lessor on outstanding rates;

**‘Rent’** means the Rent payable by the Lessee pursuant to this Lease;

**‘Term’** means the term of this Lease as specified in Item 3 of Schedule 1 commencing on the Commencement Date and any shorter period in the event of the early determination of the Term.

## **1.2 Interpretation**

In this Lease, unless the contrary intention appears:

- (a) words suggesting the singular include the plural and vice versa;
- (b) words suggesting any gender include any other gender;
- (c) reference to a person include a company, corporation, and unincorporated or incorporated association or statutory authority;
- (d) references to clauses, paragraphs, subparagraphs and Schedules are to clauses, paragraphs, and subparagraphs of, and schedules to, this Lease as amended from time to time in accordance with the terms of this Lease;
- (e) headings used for clauses, paragraphs, subparagraphs, Schedules and the table of contents are for ease of reference only and is not to affect the interpretation of this Lease;
- (f) references to laws include any modification or re-enactment of those laws, or any legislative provisions substituted for such laws, and all orders, local laws, planning schemes, by-laws, regulations and other statutory instruments issued under those laws;
- (g) where the words ‘includes’ or ‘including’ are used, they are taken to be followed by the words ‘without limitation’;
- (h) a reference to any body is:
  - (i) if that body is replaced by another organisation, taken to refer to that organisation; and

- (ii) if that body ceases to exist, taken to refer to the organisation which most nearly or substantially serves the same purposes or objects as that body; and
- (iii) all dollar amounts specified in this Lease are in Australian dollars.

## **2. LEASE**

### **2.1 Lease**

- (1) The Lessor grants a lease to the Lessee and the Lessee takes a lease of the Premises on and subject to the terms of this Lease.
- (2) Where the Land is Crown land the grant of a Lease under subclause (1) is subject to the approval of this Minister for Lands.

### **2.2 Term**

The Premises are held by the Lessee as tenant for the Term commencing on the Commencement Date specified in Item 3 of Schedule 1 and expiring on the expiry date specified in Item 3 of Schedule 1 the Lessee paying therefore the Rent payable in the manner provided in this Lease.

### **2.3 Rent**

- (1) The Lessee must pay to the Lessor for each year the annual rent specified in Item 4 of Schedule 1.
- (2) The Rent is payable in the manner set out in Item 5 of Schedule 1.

## **3. LESSEE'S OBLIGATIONS**

### **3.1 Rates and taxes**

The Lessee must punctually pay all rates, assessments, levies or taxes levied or assessed or to be levied or assessed by the Commonwealth, the State, the local government, any water supply authority, any sewerage authority or by any other authority whether statutory, governmental, or otherwise which:

- (a) are at any time during the Term or any holding over to any extent charged on the Premises or on the Lessor in respect of the Premises or both; or
- (b) arise out of or by reason of the method or kind of business carried on by the Lessee.

### **3.2 Services**

The Lessee must punctually pay for all water, gas, electricity, telephone, rubbish and other utility services which are either provided to or used on the Premises.

### **3.3 Maintenance**

- (1) The Lessee must keep and maintain every part of the Premises and all lighting and electrical installations and all drainage and septic systems and all other fixtures and fittings in good and substantial repair, order and condition, fair wear and tear excepted.
- (2) The Lessee will be responsible for all building maintenance to the Premises.

### **3.4 Cleaning**

The Lessee must keep and maintain the Premises well cleansed and drained in good sanitary condition and properly disinfected, free from rubbish, refuse and disused material of any kind and the Lessee must observe, perform, discharge, execute and take such sanitary measures and precautions and subject to clause 3.25, construct such works and make such amendments, alterations and additions to the Premises at any time during the Term as are required by or under any written law.

### **3.5 Security**

- (1) All closed circuit television cameras and equipment (if installed) must be kept fully operational at all times and shall be maintained and/or repaired at the Lessees' expense.
- (2) A minimum of seven days' images must be stored and shall be made available to the Lessor and/or police on request.

### **3.6 Locks**

No Bi Lock ® lock shall be removed or altered in any way.

### **3.7 Alarm System**

Any alarm system installed on the Premises shall be maintained and kept fully operational at all times, including a monitored service which is operated and maintained at the Lessee's expense.

### **3.8 Make good damage**

At the Lessee's own expense from time to time the Lessee must make good any breakage, defect or damage to the Premises or any adjoining premises or facilities or any other property caused by want of care, misuse or abuse on the part of the Lessee or the Lessee's employees agents, contractors, invitees, licensees, sub-tenants or other persons claiming through or under the Lessee or otherwise occasioned by any breach or default of the Lessee under this Lease.

### **3.9 Repaint**

Without limiting the generality of clause 3.3, at the Lessee's own expense, the Lessee must paint, colour, varnish and paper to the reasonable satisfaction of the Lessor all such parts of the Premises as have been previously painted, coloured, varnished or



papered on expiration of the Term.

### **3.10 Entry by Lessor to view and to repair**

- (1) The Lessee must permit the Lessor, the Lessor's architects, agents and contractors at all reasonable times upon 24 hours written notice to enter into and upon the Premises in order to view and examine the state of repair, order and condition and to leave upon the Premises notice of any lack of repair, order, condition, neglect or defect for which the Lessee is liable and requiring the Lessee to make good the same within the time specified in the notice and the Lessee must make good the same in accordance with the notice to the satisfaction of the Lessor.
- (2) The Lessee must permit the Lessor, the Lessor's agents and contractors at all reasonable times and, in the case of emergency, at any time to enter into and remain upon the Premises with all necessary plant, equipment and materials to carry out any works or make any repairs or alterations or additions to the Premises.

### **3.11 Abatement of nuisances**

- (1) The Lessee must not do or omit to do any act matter or thing which may be or be deemed to be a nuisance within the meaning of the Health Act 1911 or any other Act or under any planning scheme, local law, regulation or written law applicable to the Premises or the use or occupation of the Premises by the Lessee and the Lessee must immediately abate any such nuisance or alleged nuisance.
- (2) The Lessee must ensure that the Premises are not used in any manner which may be or become a nuisance, disturbance or annoyance to the quiet and comfort of any occupier of any premises in the vicinity of the Premises and on being required to do so by the Lessor or any employee or agent of the Lessor the Lessee must immediately abate the nuisance, disturbance or annoyance.

### **3.12 Pests**

The Lessee must keep the Premises free of ants, termites, rodents, pests and vermin.

### **3.13 No Smoking**

The Lessee shall ensure that the Premises remain a non smoking area at all times.

### **3.14 No living in premises**

The Lessee must not use or permit the use of any part of the Premises for living or sleeping or for any unlawful purpose.

### **3.15 Defacing**

The Lessee must not, without the prior written consent of the Lessor, mark, paint, drill, write on or in any way deface any wall, ceiling, floor, wood, stone or ironwork of the Premises.

### **3.16 Rubbish**

The Lessee must not permit any rubbish or garbage to accumulate on the Premises unless confined in suitable containers which are located so as not to be visible to members of the public.

### **3.17 Disorderly behaviour**

The Lessee must use all reasonable endeavours to prevent disorderly behaviour and indecent language at the Premises.

### **3.18 Compliance with written laws**

The Lessee must comply with, carry out and perform the requirements of the Local Government Act, the Health Act and any other Act, ordinance, town planning scheme, local law, regulation or written law or of any notice, requisition or order under a written law applicable to the Premises or the use or occupation of the Premises.

### **3.19 Permitted purpose and operation of Lessee's affairs**

- (1) The Lessee must use the Premises only for the purpose specified in Item 6 of Schedule 1 or for any other purpose first approved in writing by the Lessor.
- (2) The Lessee must at all times conduct its affairs for the purpose specified in Item 6 of Schedule 1 in a first class businesslike and reputable manner and with due diligence and efficiency.

### **3.20 Insurances**

- (1) The Lessee must, at the Lessee's expense, effect and keep current, with an insurance company approved by the Lessor the following insurances in relation to the Premises:

#### **Public risk**

- (a) A policy covering public risk which:
  - (i) is in the name of the Lessee and provides for a minimum cover of ten million dollars (\$20,000,000.00) for each accident, claim or event or such higher amount as the Lessor reasonably specifies; and
  - (ii) extends to cover any liability for the death of, or injury to, any person or damage to any person's property sustained when such person is using or entering or near the Premises, or sustains the

injury or damage as a result of an act or omission of the Lessee, its agent, licensee, employee or representative.

#### **Glass**

- (b) A policy in the name of the Lessee and the Lessor covering the breakage of any glass on the Premises including any plate glass. The Lessee agrees that all money received under the insurance policy will be expended in reinstating the damaged glass. If such money is insufficient to meet the cost of the reinstatement the Lessee must reinstate the damaged glass at its own expense to the Lessor's satisfaction;

#### **Fittings and chattels**

- (c) A policy covering the Lessee's fittings, fixtures and chattels contained in or about the Premises for its full insurable value against loss or damage resulting from fire and extraneous risks including but not limited to water, storm and rainwater damage.
- (2) The Lessee must give to the Lessor at least 30 days' written notice before either cancellation of a policy or a reduction in its level or extent of cover.

### **3.21 Evidence of insurance cover**

- (1) Before taking possession of the Premises, the Lessee must deliver the insurance policies required under this Lease to the Lessor.
- (2) The Lessee must give satisfactory evidence to the Lessor that the policies have been renewed within 7 days after the expiration of each policy term.

### **3.22 Not to void insurances**

The Lessee must not at any time do or allow anything which may either render the insurances on the Premises or any part of it void or voidable.

### **3.23 Compliance with insurance regulations**

- (1) The Lessee must comply with insurance, sprinkler and fire alarm regulations as they relate to the use of the Premises.
- (2) The Lessee must pay to the Lessor the cost of any alterations to any sprinkler or fire alarm installation which may become necessary by reason of the non-compliance by the Lessee with the regulations of the Insurance Council of Australia or the requirements of the Lessor's insurer or both of them.
- (3) The Lessee must pay to the Lessor on demand the Lessor's costs of carrying out:
  - (a) any testing and servicing of fire equipment and systems and of electrical equipment which may be required by law or recommended by any relevant authority; and

- (b) any alteration to any fire equipment and systems which may become necessary by reason of non-compliance by the Lessee with the requirements of any insurer, relevant authority or local government.
- (4) Subject to the preceding paragraphs of this clause, the Landlord is responsible for the cost of installing any additional or new sprinkler or fire alarm system which may become necessary by reason of a change or alteration to the regulations or legislation governing fire control in the Premises, the regulations of the Insurance Council of Australia or the requirements of the Lessor's insurer.

### **3.24 Indemnity**

- (1) The Lessee must indemnify the Lessor and keep the Lessor indemnified from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever ('Claim') which the Lessor may suffer or incur in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in upon or at the Premises or the use by the Lessee of the Premises or to any person or the property of any person using or entering or near any entrance to the Premises or occasioned (wheresoever it may occur) wholly or in part by any act, neglect, default or omission by the Lessee its agents, contractors, servants, workmen, customers, members or any other person or persons using or upon the Premises with its consent or approval expressed or implied, unless such Claim is caused directly or indirectly by the action or omission of the Lessor.
- (2) The Lessee must indemnify and keep indemnified, the Minister for Lands from and against all claims for compensation or costs which may be incurred directly or indirectly by reason of or in relation to the use of the Premises by the Lessee.

### **3.25 Alterations and improvements**

The Lessee must not, without the prior written consent of the Lessor, make or permit to be made any alteration in or additions to the Premises or remove from the Premises any improvement and the Lessee must not cut maim or injure or suffer to be cut maimed or injured any of the walls, floors, ceilings, plumbing, gas or electrical fixture or fittings or timbers.

### **3.26 Notice of defects**

The Lessee must give to the Lessor immediate notice in writing of any damage to or defect in the Premises or the water or sewerage pipes, gas pipes, electrical light fixtures or any plant fittings or equipment in the Premises.

### **3.27 Sale and storage of alcohol**

- (1) The Lessee must not sell or permit the sale of any alcohol or alcoholic beverage on the Premises except with the prior consent in writing of the Lessor

and in accordance with a licence under the Liquor Control Act 1988.

- (2) The Lessee must not store any quantity of alcohol or alcoholic beverage on the Premises except in accordance with the prior consent in writing of the Lessor.

### **3.28 Assignment or subletting**

- (1) The Lessee must not assign, sublet or part with the possession of the Premises or any part of the Premises and the Lease without the prior written consent of the Lessor.
- (2) Sections 80 and 82 of the Property Law Act 1969 are expressly excluded.
- (3) The Lessee must not mortgage, encumber or charge the Premises or the Lease.

### **3.29 Signs**

The Lessee must not, without the prior written consent of the Lessor, affix or exhibit or permit to be affixed to or exhibited upon any part of the exterior of the Premises or in any place visible from outside the Premises any placard, sign, notice, poster, hoarding or advertisement.

### **3.30 Annual financial accounts**

Where the Lessee is an incorporated association, the Lessee must, upon receipt of a written request by the Lessor, immediately give to the Lessor a copy of the annual financial accounts submitted to the members of the Lessee at the annual general meeting.

### **3.31 Legal costs**

- (1) Each party shall bear their own costs of and incidental to the preparation, negotiation and execution of this Lease.
- (2) Each party shall bear their own cost in obtaining legal advice on the document.

### **3.32 Lessee to make good**

- (1) At the expiration or sooner determination of this Lease:
  - (a) the Lessee must yield up the Premises to the Lessor in the condition required by this Lease;
  - (b) the Lessee must remove from the Premises all fixtures, fittings and chattels brought onto the Premises by or for the use of the Lessee except for any structural improvements and any fixtures, fittings and chattels provided for the use of the Lessee and which the Lessor determines should remain in the Premises. The Lessee must not do or allow any damage to the Premises in such removal. If however any damage occurs the Lessee will immediately make it good;

- (c) the Lessee must remove any lettering, signs, names, advertisements and notices erected, painted, displayed or affixed onto or within the Premises and make good any damage caused by reason of such erection, painting, displaying, affixing or removal. If the Lessee defaults under this clause the Lessor may remove and make good at the Lessee's expense; and
  - (d) the Lessee must make good any damaged or missing loose items as listed in Schedule 3 to equal quantity and quality.
- (2) If the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option do either or both of the following:
  - (a) remove and store any of them in such a manner as the Lessor determines at the cost of the Lessee; and
  - (b) treat them as if the Lessee had abandoned its interest in them and they had become the property of the Lessor may then deal with them in such manner as the Lessor determines. If the Lessor sells them then the Lessor need not account to the Lessee for the proceeds of sale but may apply the proceeds of sale as the Lessor sees fit.

### **3.33 No registration or absolute caveat**

- (1) The Lessee must not register this Lease or lodge any absolute caveat in respect of the Premises.
- (2) If any absolute caveat is registered or lodged or the Lease is registered by the Lessee, then in consideration of the Lessor having granted this Lease to the Lessee, the Lessee hereby irrevocably appoints the Lessor and each and every one of the officers or agents of the Lessor jointly and severally for the Term and for a period of 6 months after the Term the agent and attorney of the Lessee to surrender or withdraw the lease or caveat the cost of which must be borne and paid by the Lessee.

## **4. QUIET POSSESSION**

If the Lessee pays the Rent and performs its covenants contained in this Lease the Lessee may peaceably possess and enjoy the Premises for the Term without any interruption from the Lessor or any person lawfully claiming through, from or under its subject always to the rights, powers, remedies and reservations of the Lessor contained in this Lease.

## **5. MUTUAL AGREEMENTS**

### **5.1 Default**

If:

- (a) the Rent or any part of it is in arrears for 14 days even if it has not been formally demanded;

- (b) the Lessee breaches or does not comply with any provision whether expressed or implied in this Lease;
- (c) repairs required by any notice given by the Lessor under this Lease are not completed within the time specified in the notice;
- (d) the Lessee defaults in the payment of any moneys owing to the Lessor other than rent whether under this Lease or any other account after 14 days written demand for payment has been made by the Lessor on the Lessee;
- (e) the Lessee is a corporation and an order is made or a resolution is passed for the winding up of the Lessee except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent is not to be unreasonably withheld;
- (f) the Lessee is a corporation and ceases or threatens to cease to carry on business or goes into liquidation whether voluntary or otherwise or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (g) the Lessee is a corporation and is placed under official management or an administrator is appointed under or pursuant to the provisions of the relevant Corporations Law or enters into a composition or scheme of arrangement;
- (h) the interest of the Lessee under this Lease is taken in execution;
- (i) the Lessee or any person claiming through the Lessee conducts any business from the Premises after the Lessee has committed an act of bankruptcy;
- (j) the Lessee abandons or vacates the Premises; or
- (k) the Lessee being an incorporated association:
  - (i) is wound up or resolves to be dissolved or wound up voluntarily;
  - (ii) without the prior written consent of the Lessor, changes its name, objects or constitution;
  - (iii) is convicted of an offence under the Associations Incorporations Act 1987,

then the Lessor may in addition to its other powers either:

- (i) re enter on the Premises or any part of them with force if necessary and eject the Lessee and all other persons from and repossess the Premises; or

- (ii) by notice in writing to the Lessee determine this Lease,

or both.

## **5.2 Lessor's powers**

- (1) If the Lessor exercises its powers under clause 5.1, this Lease is to terminate but the Lessee is not released from liability for any breach of or non-compliance with any provision of this Lease and the remedies available to the Lessor for recovery of arrears of rent or for prior breach or non-compliance are not affected.
- (2) On termination if the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option do either or both of the following:
  - (a) remove and store any of them in such a manner as the Lessor determines at the cost of the Lessee; and
  - (b) if the Lessee does not remove or recover them within a month after termination of the Lease, treat them as if the Lessee had abandoned its interest in them and they had become the property of the Lessor and the Lessor may then deal with them in such a manner as the Lessor determines. If the Lessor sells them, it need not account to the Lessee for the proceeds of sale, but may apply the proceeds of sale as it sees fit.

## **5.3 No Lessor Representation**

- (1) The Lessor does not warrant or represent that:
  - (a) the Premises are suitable for the Permitted Purpose;
  - (b) the Lessor's Fixtures and Fittings and services are suitable for the Permitted Purpose;
  - (c) the Premises may lawfully be used for the Permitted Purpose; or
  - (d) zoning of the Premises will allow the Premises to be used for the Permitted Purpose,

and the Lessee agrees that, before signing the Lease, the Lessee made its own inquiries about zoning.

- (2) Any warranty as to the suitability of the Premises implied by law is expressly negated.

## **5.4 Damage to the Premises**

- (1) If the Premises are destroyed or damaged so as to render them, in the opinion of the Lessor, wholly or partially unfit for the Permitted Purpose then the



Lessor may, on giving one month's notice in writing to the Lessee, terminate this Lease.

- (2) Termination under subclause (1) is without prejudice to any rights which may have accrued to either party prior to termination.

## **5.5 Lessor not Liable for Interruption of Services**

Despite any implication or rule of law to the contrary, the Lessor is not liable to the Lessee (except for any wilful or negligent acts of the Lessor or its officers, servants or agents) for any loss or damage suffered by the Lessee through:

- (a) any malfunction, failure to function or interruption of or to the water, gas or electricity services, the air-conditioning equipment, fire equipment or any of the appurtenances contained in the Premises; or
- (b) the blockage of any sewers, water, drains, gutters, downpipes or storm water drains from any cause, and

the Lessee is not entitled to terminate the Lease for any such reason nor have any right of action or claim for compensation or damages against the Lessor in respect of such failure.

## **5.6 Entry by Lessor**

If the Lessee fails to duly and punctually observe or perform any provision of this Lease the Lessor is entitled to carry out the observance or performance of the provision and for that purpose the Lessor or the Lessor's architects, servants agent or workmen may if necessary enter the Premises and the cost and expense incurred in the observance or performance together with interest thereon at a rate of 2% per annum greater than the Rate of Interest is to be a debt due by the Lessee to the Lessor and is to be payable on demand and may be recovered by the Lessor in the same manner as if such debt were for rent due under this Lease in arrears by action in law and such cost expense and interest is to be a charge on the term.

## **5.7 Works by Lessor**

- (1) The Lessor may by itself or its agents at all reasonable times upon 24 hours written notice, or immediately in the case of an emergency, enter the Premises or any part of the Premises for any one or more of the following purposes:
  - (a) complying with the terms of any legislation affecting the Premises and any notices served on the Lessor or Lessee by any statutory, licensing, municipal or other competent authority;
  - (b) carrying out any repairs, alterations or works of a structural nature;
  - (c) installing any services such as air-conditioning apparatus, automatic fire sprinklers, gas pipes, water pipes, drainage pipes, cables or electrical wiring;

- (d) making any repairs which the Lessor may think necessary to the Premises;
  - (e) making any improvements or alterations to the adjoining Premises which the Lessor may consider necessary;
  - (f) taking inventories of fixtures; or
  - (g) exercising the powers and authorities of the Lessor under this Lease.
- (2) Except where the works referred to in this clause are carried out by the Lessor due to a default of the Lessee's obligations pursuant to this Lease, the Lessor is responsible for the costs of carrying out those works.
  - (3) In carrying out the works referred to in this clause the Lessor is not to cause unnecessary interference with the use of the Premises by the Lessee.

## **5.8 Holding over**

If the Lessee holds over the Premises upon the expiry of the Term then a tenancy from year to year is not to be presumed but in that event the tenancy is a tenancy from week to week at the rent then payable but otherwise upon the terms and conditions contained in this Lease insofar as they are applicable and is determinable at the expiration of one week's notice by either party to the other at any time.

## **5.9 No waiver**

- (1) No waiver (whether express or implied) by the Lessor of any breach of any covenant, obligation or provision contained or implied in this Lease is to operate as a waiver of any other breach of the same or any other covenant, obligation or provision contained or implied in this Lease and it does not operate as a waiver of the essentiality of any obligation which by virtue of this Lease is an essential term of this Lease.
- (2) In particular, any demand by the Lessor for, or any acceptance by the Lessor of, rent or other moneys payable under this Lease does not constitute a waiver by the Lessor of any breach of any provision in this Lease and does not create any new tenancy between the parties.
- (3) No custom or practice which has grown up between the parties in the course of administering this Lease is to be construed so as to waive or lessen the right of the Lessor to insist on the performance by the Lessee of all or any of the Lessee's obligations under this Lease.

## **5.10 No warranty**

- (1) This document embodies the whole transaction of leasing made by this Lease and all warranties, conditions and representations collateral or otherwise concerning the leasing whether written, oral, express or implied and whether consistent with this document or not are cancelled.

- (2) This Lease may be amended only by instruments in writing executed by the Lessor and the Lessee.

#### **5.11 Lessor's right to install services**

The Lessor reserves to itself and to its employees agents and contractors the right to enter upon the Premises at all reasonable times with all necessary materials and appliances to erect, make, excavate, lay, or install in on over or under the Premises any posts, drains pipes, conduits, cables wires, or other things requisite for any existing or future service to the Premises together with the like right to enter upon the Premises for the purpose of inspecting, removing, maintaining, altering or adding to any such things relation to an existing service to the Premises and, in each such case the Lessor is to cause as little inconvenience and damage to the Lessee as is practicable in the circumstances.

#### **5.12 Execution of works by Lessor**

If the Lessor desires or is required to:

- (a) execute any works which by law the Lessor is bound and has been required to execute on the Premises; or
- (b) build any further storeys upon any building; or
- (c) alter, repair, add to or re-build any part of the Premises; or
- (d) construct, erect, lay down, alter, repair, cleanse or maintain any drain, ventilator shaft, water pipe, electric wires or gas pipes in connection with or for the accommodation of the Premises or any adjoining property; or
- (e) underpin; or
- (f) reinstate or re-build in case of fire,

then and in any such case the Lessor may with or without employees, agents, workmen and contractors and appliances enter upon the Premises and carry out such works doing as little damage to the Premises as is reasonably possible and restoring them without unreasonable delay but without making compensation for any damage or inconvenience to the Lessee provided that in each case the Lessor is to cause as little inconvenience and damage to the Lessee as is practicable in the circumstances.

#### **5.13 Notices**

- (1) Any notice or demand from the Lessor to the Lessee is to be taken to be duly served if left for the Lessee on the Premises, if mailed by prepaid letter addressed to the Lessee at the address set in this Lease or if sent by facsimile machine to the Lessee's facsimile machine.
- (2) Any notice or demand from the Lessee to the Lessor is to be taken to be duly served if mailed by prepaid letter addressed to the Lessor at its office.
- (3) A notice or demand posted mailed is to be taken to be duly served at the expiration of 48 hours after the time of posting mailing and any notice given by one party to the other may be signed on behalf of the party giving it by a

director, secretary, chief executive officer or solicitor.

#### 5.14 Additional terms, covenants and conditions

The additional terms, covenants and conditions in Schedule 2 ('Special Terms') are taken to be incorporated in, and form part of, this Lease and if there is any inconsistency between the Special Terms and any provision of this Lease then the Special Terms prevail to the extent of the inconsistency.

### 6. ESSENTIAL TERMS

The Lessee and the Lessor agree that each of clauses 2.3, 3.1, 3.2, 3.3, 3.4, 3.19, 3.20 and 3.28 and Schedule 2 are essential terms of this Lease, and any breach or failure by the Lessee to comply with any of those clauses entitles the Lessor to all rights and remedies available to it in respect of breach of or failure to comply with an essential term.

### 7. GST

- (1) If GST is imposed or levied in respect of any supply by a party under or in accordance with this Lease (including the supply of the Premises or the supply of any goods, services, rights, benefits or other things) then the party making the supply may recover the GST Amount from the party receiving the supply in addition to the Consideration. The party making the supply must provide such invoices to the party receiving the supply as are required pursuant to the GST Legislation.

- (2) In this clause:

**'Consideration'** means any amount or consideration payable or to be provided pursuant to any provision of this Lease other than this clause;

**'GST'** means any form of goods and services tax or similar value added tax;

**'GST Amount'** means the Consideration (after deducting the GST Exempt Component) multiplied by the Rate;

**'GST Exempt Component'** means any part of the Consideration which solely relates to a supply that is free or exempt from the imposition of GST;

**'GST Legislation'** means A New Tax System (Goods and Services Tax) Act 1999 and any other legislation or regulation which imposes, levies, implements or varies a GST or any applicable rulings issued by the Commissioner of Taxation;

**'Rate'** means the rate at which GST Legislation from time to time imposes or levies GST on the relevant supply under this Lease;

**'Supply'** includes supply as defined under GST Legislation.

## SCHEDULE 1

<b>Item 1</b>	<b>Lessee's Name and Address:</b>	West Plantagenet Pony Club Incorporated
<b>Item 2</b>	<b>Land:</b>	Reserves 13892, 9020 & 13852, Martagallup Road, Kendenup (as shown on the attached map)
	<b>Premises:</b>	The buildings and land
<b>Item 3</b>	<b>Term:</b>	Five Years
	<b>Commencement Date:</b>	27 September 2017
	<b>Expiry Date:</b>	26 September 2022
<b>Item 4</b>	<b>Annual Rent:</b>	\$1.00 per annum if and when demanded
<b>Item 5</b>	<b>Manner of payment of rent:</b>	Cheque Direct Deposit In Person at Administration Office
<b>Item 6</b>	<b>Permitted Purpose:</b>	Pony Club

## **SCHEDULE 2**

### **ADDITIONAL TERMS AND CONDITIONS**

**Nil.**

DRAFT

**EXECUTED by the parties**

**THE COMMON SEAL of SHIRE OF )**  
**PLANTAGENET** was hereunto affixed pursuant )  
to a resolution of the Council in the presence of: )

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Shire President

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Chief Executive Officer

**On behalf of WEST PLANTAGENET PONY  
CLUB INCORPORATED:**

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President

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Vice-President

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Secretary