

Council

RESERVE 1790 MCDONALD AVENUE, MOUNT
BARKER – LICENCE OF PARTS OF FROST PARK
TO MOUNT BARKER TURF CLUB INC

Licence – Reserve 1790 McDonald Avenue, Mount
Barker – Mount Barker Turf Club Inc.

Meeting Date: 30 April 2019

Number of Pages : 17

**Licence Agreement for
use of
Frost Park, Mount Barker,
Western Australia,
Shire of Plantagenet
Class 'A' Reserve 1790**



Mount Barker Legal Pty Ltd
PO Box 45, Mount Barker WA 6324
Ref: 18071

Index

<i>Clause</i>	<i>Page</i>
Particulars:	1
1. Definitions	2
2. Interpretation	2
3. Term	3
4. Payment of Licence Fee	3
5. Goods and Services Tax	3
6. Reticulation and Water Use	4
7. Use of the Licensed Premises	4
8. Maintenance and Repair	6
9. No Assignment or Sublicensing	7
10. Insurances and Indemnities	7
11. Occupational Safety and Health Act	9
12. Default and Termination	9
13. Termination of Term	10
14. Notices	11
15. Costs	11
16. Licensor's Consent	11
17. General	11
Plan – Licensed Premises	13

This Licence Agreement is made by:

Shire of Plantagenet
of 22-24 Lowood Road, Mount Barker, Western Australia
(‘Licensor’)

and

Mount Barker Turf Club Inc
of PO Box 287, Mount Barker, Western Australia
(‘Licensee’)

on the date shown on the last page of this Agreement.

Particulars:

Item 1: Land

Shire of Plantagenet Class ‘A’ Reserve 1790, known as Frost Park, Mount Barker, Western Australia.

Item 2: Licensed Premises

Subject to clause 7, the Track and Exclusive Use Infrastructure as marked on the Plan.

Expressly excluded from this Licence are Ram Pavilion (subject to clause 7.6), Frost Pavilion, Frost Park Oval and Taylor Dennis Pavilion.

Item 3: Exclusive Use Infrastructure

The Track Towers, Stables and Mounting Area, Skinner Pavilion, Tote Room and Sea Container as marked on the Plan.

Item 4: Improvements

Any property owned by the Licensor or third parties on the Land whether or not they form part of the Licensed Premises.

Item 5: Commencement Date

1st May 2019

Item 6: Term

5 years.

Item 7: Licence Fee

\$10 per annum.

Item 8: Permitted Use

Subject to clause 7, equine racing and training including associated special events.

Grant of Licence:

The Licensor grants a licence for the Licensee to use the Licensed Premises during the Licence Period and subject to the provisions of this Licence Agreement. The Licensor and the Licensee agree:

1. Definitions

In this Licence Agreement:

- 1.1. Items described in the Particulars have a corresponding definition in this Agreement;
- 1.2. **Business Day** means a day not being a Saturday, Sunday or a public holiday in Perth, Western Australia;
- 1.3. **Claim** means any claim, notice, demand, action, suit, proceeding, litigation, investigation, judgement, cost, loss and expense of any nature whatsoever whether present or future and whether based in contract, tort or statute;
- 1.4. **Plan** means the plan of the Licensed Premises annexed to this Licence;
- 1.5. **Services** means all utilities and services to the Licensed Premises;
- 1.6. **Licensee's Employees** means each of the Licensee's employees, contractors, agents, customers, sublicensees, licensees or others (with or without invitation) who may be on Licensed Premises; and
- 1.7. **Licensee's Property** includes all fixtures, chattels and other property on the Licensed Premises which are not the Licensor's.

2. Interpretation

In this Licence unless the context otherwise requires:

- 2.1. headings and boldings do not affect the interpretation;
- 2.2. a person includes a body corporate;
- 2.3. a reference to any document or instrument refers to that document or instrument as amended;
- 2.4. words meaning the singular include the plural and vice versa;
- 2.5. if any party comprises two or more persons, they are bound and liable jointly and severally;
- 2.6. the term 'including' means including but not limited to;
- 2.7. a reference to any party includes that party's legal personal representatives, administrators, successors and assigns;
- 2.8. words which are defined in the Corporation Act and used in this Licence have the meaning given to them in the Corporation Act; and
- 2.9. the provisions of the Particulars and any Schedule or Plan form part of this Licence.

3. Term

Term

- 3.1. The Licensor licences the Licensed Premises to the Licensee for the Term commencing on the Commencement Date.

Monthly Tenancy

- 3.2. If the Licensee continues to occupy the Licensed Premises after the Term with the Licensor's consent then:
- a) the Licensee does so as a monthly licensee on the same basis as at the last day of the Term; and
 - b) either party may terminate the monthly tenancy by giving to the other 1 month's notice expiring on any day.

4. Payment of Licence Fee

- 4.1. The Licensee must:

- a) pay the Licence Fee by annual instalments upon demand of the Licensor as the Licensor directs; and
- b) pay the first instalment on the date this Licence commences.

- 4.2. Each payment of the Licence Fee must be made with an additional amount equal to any goods and services, consumption, value added tax applying to that payment.

5. Goods and Services Tax

Definitions in this clause

- 5.1. In this clause the following terms have the meanings ascribed to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth): **Adjustment Note**, **GST**; **GST Group**; **Input Tax Credit**; **Member**; **Recipient**; **Representative Member**; **Supply**; and **Tax Invoice**.

Consideration is exclusive of GST

- 5.2. The consideration for a Supply under this Licence is exclusive of any GST imposed on the Supply.

Recovery of GST

- 5.3. If a Supply under this Licence is subject to GST:
- a) the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
 - b) the Recipient must pay the additional amount to the supplier at the same time as the other consideration;

however, the Recipient need not pay the additional amount until the supplier gives the Recipient a Tax Invoice.

Adjustment of additional amount

- 5.4. If the additional amount differs from the amount of GST payable by the supplier on the Supply:
- a) the supplier must promptly issue an Adjustment Note to the Recipient; and
 - b) an amount equal to the difference must be paid by the supplier to the Recipient, or by the Recipient to the supplier, as appropriate.

Reimbursement

- 5.5. If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the Representative Member of any GST Group of which that party is a member is entitled to an Input Tax Credit.

6. Reticulation and Water Use

- 6.1. The Licensor and Licensee acknowledge that:
- a) the Licensee owns the reticulation installed on the Track. The Licensee must maintain the reticulation installed on the Track at all times during the Term;
 - b) ownership of the reticulation installed on the Track reverts to the Licensor upon termination or expiration of this Licence; and
 - c) the Licensee acknowledges that the Licensor owns the reticulation installed on the oval located on the Land and the Licensor is responsible for its maintenance; and
 - d) the water main from the Licensee's dam at Lot 81 McDonald Avenue, Mount Barker, Western Australia is the only supply the Licensee may use to irrigate the race track.
- 6.2. The Licensee will, at its cost:
- a) relocate the existing irrigation controller managing the irrigation of the race track to Agricultural Society Shed, provided that the Licensee first obtains the Agricultural Society's prior written permission;
 - b) install an additional external power supply box for the race track reticulation system, to be for sole use of the Licensee; and
 - c) install an electricity sub meter in a new secure, external power supply box and advise the Licensor on a quarterly basis of meter readings to enable the cost of supplying the power to be reimbursed.

7. Use of the Licensed Premises

Permitted Use

- 7.1. The Licensee must only use the Licensed Premises for the Permitted Use.

Exclusivity

- 7.2. The Licensor grants an exclusive licence for the Licensee to use the Exclusive Use Infrastructure. The Track is licensed to the Licensee on a non-exclusive basis.

Shared Use

- 7.3. Subject to clauses 7.2 and 7.4, the Licensee acknowledges that, other than the Exclusive Use Infrastructure, the use of the Track is non-exclusive and that the Licensee must allow the public and other users right of access to the Track and the whole of the Land that does not form part of the Licenced Premises for the purposes of recreation at all times.
- 7.4. Notwithstanding clause 7.3, the Licensee may temporarily restrict public access to the Track and oval during racing and training for safety purposes.

Notice of Intention to Use

- 7.5. Prior to the Licensee using the Licence Premises, the Licensee must provide to the Licensor reasonable written notice of the dates and times that it intends to use the Licensed Premises for the Permitted Use. The Licensee's use of the Licensed Premises, but excluding the Exclusive Use Infrastructure, at all times is subject to prior bookings of the Licensed Premises and approval by the Licensor, which approval will not be unreasonably withheld.

Use of Ram Pavilion

- 7.6. The Licensor permits the Licensee to use the Ram Pavilion to store racing gates. Such use must not interfere with other users of the Ram Pavilion. The Ram Pavilion is otherwise excluded from this Licence. The Licensee must immediately remove all equipment that it has stored in the Ram Pavilion upon the request of the Licensor.

Express Exclusions

- 7.7. The Licensee acknowledges that the campdraft equipment, horse yards and large agricultural shed are owned by third parties and expressly excluded from the Licence. The Licensee must not interfere with those facilities or the use of them.

Restrictions on Use

- 7.8. The Licensee must not:
- a) disturb any other licensees, the public or permitted users of the Licensed Premises;
 - b) overload any Services;
 - c) without prior written permission from the Licensor, install locks or other security devices, additional to any that the Licensor has installed, that inhibit access to the public or Licensor, including to the Exclusive Use Infrastructure;
 - d) damage the Improvements;
 - e) alter the Licensed Premises, or do any building work or other works without the Licensor's prior consent; or
 - f) do anything that may invalidate the Licensor's insurance or increase the Licensor's premiums.

No warranty as to Use

- 7.9. The Licensor does not warrant that the Licensed Premises:
- a) is suitable for any purpose; or
 - b) may be used for the Permitted Use.

Official Requirements and rules

- 7.10. At its expense, the Licensee must comply with any requirement, notice, order or direction of any statutory authority and includes the provisions of any statute, ordinance or by-law concerning the Licensed Premises, the Licensee's Property or the Licensee's use or occupation of the Licensed Premises or the sex, number, health and safety of persons on the Licensed Premises.

Caveats

- 7.11. The Licensee must not lodge or register any caveat against the certificate of title to the land of which the Licensed Premises forms part to protect its interests under this Licence.

8. Maintenance and Repair

Repair

- 8.1. The Licensee must:
- a) keep the Licensed Premises in good repair and condition except for fair wear and tear, inevitable accident and inherent structural defects;
 - b) promptly, and if immediate action cannot be taken, as soon as is practicable, repair all damage to roads, fences and the Licensee's Property on the Licensed Premises which results from use of the Licensed Premises by the Licensee; and
 - c) fix any damage caused by the Licensee or the Licensee's Employees.
- 8.2. The Licensor may do any repairs or maintenance to the Licensed Premises. The Licensor must give the Licensee reasonable notice before doing so and must cause as little disruption to the Licensee's business as is reasonably possible in the circumstances.
- 8.3. The Licensee is not liable for damage caused by public use of the Licensed Premises provided such damage is not caused by or in connection with the use by the Licensee's Employees, agents, invitees, customers, clients or patrons during the Licensee's use of the Licence Premises.

Cleaning and Maintenance

- 8.4. The Licensee must:
- a) at all times and at its own cost, maintain the Track, Stalls and Mounting Area, including ensuring all:
 - i) reticulation in the Leased Area is operating and in reasonable repair;
 - ii) grassed areas are reasonably watered; and
 - iii) fences and gates are in reasonable repair.
 - b) do such things as reasonably required to eradicate, exterminate and keep the Exclusive Use Infrastructure free from rodents, vermin and other pests of any kind, and will engage pest exterminators from time to time for that purpose;
 - c) keep the Licensed Premises clean and tidy and free of infectious diseases; and
 - d) keep the Licensee's Property and Improvements clean and maintained in good order and condition.

Not to pollute

8.5. The Licensee must:

- a) not cause pollution in or contamination of the Licensed Premises or any adjoining land by garbage, waste matter, oil and other pollutants whether by stormwater or other run-off or arising from use of the Licensed Premises; and
- b) collect and dispose of all garbage, waste matter, oil and other pollutants produced by the Licensee from the Licensed Premises at a place and in a manner required or approved by the Licensor and all relevant authorities having control over the disposal of waste matter and the protection of the environment.

Licensor's right to inspect and repair

8.6. The Licensor may:

- a) enter the Licensed Premises for inspection or to carry out maintenance, repairs or building work at any reasonable time after giving notice to the Licensee. In an emergency, the Licensor may enter at any time without giving the Licensee notice; and
- b) carry out any of the Licensee's obligations on the Licensee's behalf if the Licensee does not carry them out on time. If the Licensor does so, the Licensee must promptly pay the Licensor's costs.

Notice of damage or defect in Services

8.7. The Licensee must promptly give the Licensor notice of:

- a) any damage to, defect or disrepair in the Services or the Improvements; and
- b) any circumstances likely to cause any risk to the Licensed Premises or any person.

9. No Assignment or Sublicensing

9.1. The Licensee must not assign the Licence or sublicense the Licensed Premises.

9.2. Sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to this Licence.

10. Insurances and Indemnities

Licensee's insurance

10.1. The Licensee must maintain at its own cost insurance on usual terms with an insurer authorised under the *Insurance Act 1973* for:

- a) public risk for at least \$20,000,000;
- b) damage to and loss of the Licensee's Property that is on or in the Licensed Premises for the full replacement cost;
- c) employer's liability in respect of the Licensee's Employees (including worker's compensation insurance); and
- d) all other risks as the Licensor may reasonably from time to time determine.

Licensor's insurance

- 10.2. The Licensor will maintain insurance for the Licensor's buildings and fittings on the Licensed Premises, including the Exclusive Use Infrastructure. The Licensee will be responsible for any loss or cost suffered by the Licensor:
- a) by making any claim against such insurance policy, including any policy excess; or
 - b) carrying out any repairs (other than structural repairs not caused by the Licensee) where the Licensor determines that the cost of such repairs is less than the Licensor's excess associated with those insurance policies.

Licensee's policies

- 10.3. All policies under this clause must be acceptable to the Licensor and with an insurer approved by the Licensor and endorsed to note the interest of the Licensor as licensor of the Licensed Premises.

Proof of insurance policies

- 10.4. The Licensee must give the Licensor evidence of its insurance if the Licensor asks for it.

Licensee's release and indemnity

- 10.5. The Licensee:
- a) occupies and uses the Licensed Premises at its own risk;
 - b) carries out any building work (with the consent of the Licensor) on the Licensed Premises at its risk;
 - c) releases the Licensor and the Minister for Lands from and indemnifies them against all Claims for damages, loss, injury or death relating to the Licensee's use of the Licensed Premises:
 - i) whether or not it is caused by the Licensee's negligence or default if it:
 - A. occurs on the Licensed Premises;
 - B. arises from the use of the Services on the Licensed Premises; or
 - C. arises from the overflow or leakage of water from the Licensed Premises,except to the extent that it is caused by the Licensor's deliberate act or negligence; and
 - ii) if it arises from the negligence or default of the Licensee or the Licensee's Employees, except to the extent that it is caused by the Licensor's deliberate act or wilful negligence.
- 10.6. The Licensee releases the Licensor from and indemnifies the Licensor against any Claim or costs arising from anything the Licensor is permitted to do under this Licence.

11. Occupational Safety and Health Act

The Licensee:

- 11.1. acknowledges and agrees that for the purpose of the *Occupational Safety and Health Act 1984 (WA) (Act)* the Licensee has the control of the Exclusive Use Infrastructure at all times and the Licenced Premises during racing and associated events and all plant and substances on those respective areas during those respective periods; and
- 11.2. releases and indemnifies the Licensor from and against any Claim or obligation or liability of the Licensor under any occupational health and safety legislation as defined in the Act, except to the extent that any breach of the Act is contributed to by the Licensor's deliberate act or negligence.

12. Default and Termination

Default

- 12.1. The Licensee defaults under this Licence if:
 - a) the Licence Fee or any money payable by the Licensee is unpaid for 7 days;
 - b) the Licensee breaches any other term of this Licence and such breach is unremedied within 10 Business Days of notice of breach having been served on the Licensee;
 - c) the Licensee assigns its property for the benefit of creditors; or
 - d) the Licensee becomes an externally-administered body corporate within the meaning of the *Corporations Act 2001 (Cth)*.

Forfeiture of Licence

- 12.2. If the Licensee defaults and does not remedy the default when the Licensor requires it to do so, the Licensor may do any one or more of the following:
 - a) re-enter and take possession of the Licensed Premises and by notice to the Licensee, terminate this Licence;
 - b) by notice to the Licensee, convert the unexpired portion of the Term into a tenancy from month to month;
 - c) exercise any of its other legal rights; or
 - d) recover from the Licensee or the Guarantor (if any) any loss suffered by the Licensor due to the Licensee's default.

Repudiation

- 12.3. If the Licensee repudiates this Licence or breaches an essential term of this Licence the Licensor may recover all money payable by the Licensee under this Licence up to the end of the Term. However, the Licensor must minimise its loss.
- 12.4. The essential terms are:
 - a) to pay the Licence Fee (clause 4);
 - b) to use the Licensed Premises for only the Permitted Use (clause 7.1);
 - c) to comply with Official Requirements (clause 7.10);

- d) to maintain and repair (clause 8.1); and
- e) not to assign or sublicense the Licence (clause 9).

Licensor's Entitlement to Damages

- 12.5. The Licensor's entitlement to damages is not limited or affected if:
- a) the Licensee abandons the Licensed Premises;
 - b) the Licensor elects to re-enter the Licensed Premises or terminate this Licence;
 - c) the Licensor accepts the Licensee's repudiation; or
 - d) the parties' conduct constitutes or may constitute a surrender by operation of law.

Liquidated Debt

- 12.6. The Licensor may remedy any default by the Licensee and recover its costs of doing so from the Licensee as a liquidated debt.

Waiver

- 12.7. No waiver by the Licensor is effective unless it is in writing.
- 12.8. Despite the Licensor's knowledge at the time, a demand for the Licence Fee or other money owing by the Licensee or the subsequent acceptance of the Licence Fee or other money does not constitute a waiver of any earlier default by the Licensee.

Interest on Overdue Money

- 12.9. The Licensor may charge daily interest to the Licensee on any late payment by the Licensee at a rate of 3% above the Cash Rate published by the Reserve Bank of Australia from time to time.

13. Termination of Term

Licensee's obligations

- 13.1. On termination the Licensee must:
- a) vacate the Licensed Premises and give it back to the Licensor in good repair and condition in accordance with the Licensee's obligations in this Licence;
 - b) remove all the Licensee's Property from the Licensed Premises;
 - c) repair any damage caused by removal of the Licensee's Property and leave the Licensed Premises in good repair and condition; and
 - d) return all keys, security passes and cards held by it or the Licensee's Employees.

Failure to Remove Licensee's Property

- 13.2. If the Licensee does not remove the Licensee's Property at the end of the Term, the Licensor may:
- a) remove and store the Licensee's Property at the Licensee's risk and expense; or
 - b) treat the Licensee's Property as abandoned, in which case title in the Licensee's Property passes to the Licensor who may deal with it as it thinks fit without being liable to account to the Licensee.

14. Notices

In Writing

- 14.1. Any notice given under this Licence must be in writing. A notice by the Licensor is valid if signed by an officer or solicitor of the Licensor or any other person nominated by the Licensor.

Notice of Address

- 14.2. The Licensee must promptly notify the Licensor of its address, facsimile number or email address and the address and facsimile number or email address of any Guarantor and update the notice if any changes occur.

Service of Notice on Licensee

- 14.3. The Licensor may serve a notice on the Licensee by:
- a) giving it to the Licensee personally;
 - b) sending it to the Licensee's facsimile number or email address; or
 - c) posting it to the Licensee's last known registered office, place of business or residence.

Service of Notice on Licensor

- 14.4. The Licensee may serve a notice on the Licensor by leaving it at, or posting, emailing or faxing it to the address or number of the Licensor as described in this Licence or as the Licensor may provide by written notice to the Licensee.

15. Costs

- 15.1. The Licensor will pay the costs of preparation of the Licence.
- 15.2. The Licensee must pay the Landlord's reasonable legal fees and outlays from any breach of this Licence by the Licensee.

16. Licensor's Consent

Unless otherwise stated, if the Licensor's consent or approval is required:

- 16.1. the Licensor must consider the request promptly and be reasonable in giving or refusing its consent or approval;
- 16.2. the Licensor may require the Licensee to comply with any reasonable conditions before giving its consent; and
- 16.3. it is not effective unless in writing.

17. General

Severability

- 17.1. Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down so as to be valid and enforceable and severed to the extent of the invalidity or unenforceability in that jurisdiction, without affecting the validity or enforceability of that provision in any other jurisdiction.

Whole Agreement

- 17.2. This Licence comprises the whole agreement between the parties and subject only to any provision expressly to the contrary supersedes all prior agreements and understandings between the Licensor and the Licensee in relation to the Licensed Premises.

Counterparts

- 17.3. This Licence may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

Governing Law

- 17.4. This Licence is governed by the laws of Western Australia and where applicable the Commonwealth of Australia.

WAPC consent

- 17.5. If for any reason this Licence requires the consent of the Western Australian Planning Commission, then this Licence is made expressly subject to and conditional upon the granting of consent of the Western Australian Planning Commission.

No right to set off by Licensee

- 17.6. The Licensee is not entitled to set off any amount the Licensor owes it whether under this Licence or not against any amount the Licensee owes the Licensor under this Licence.

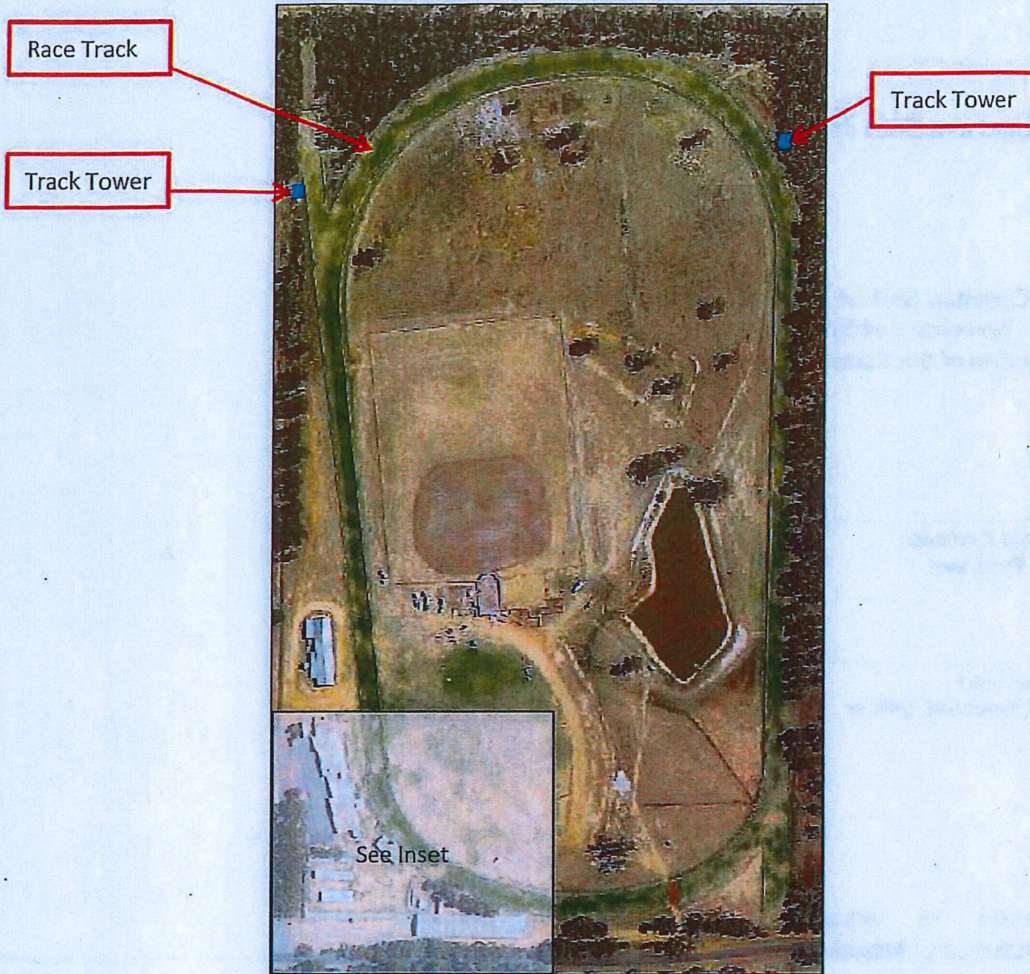
Adverse Construction

- 17.7. The terms of this Agreement must not be construed adversely against a Party merely because that party was responsible for drafting it.

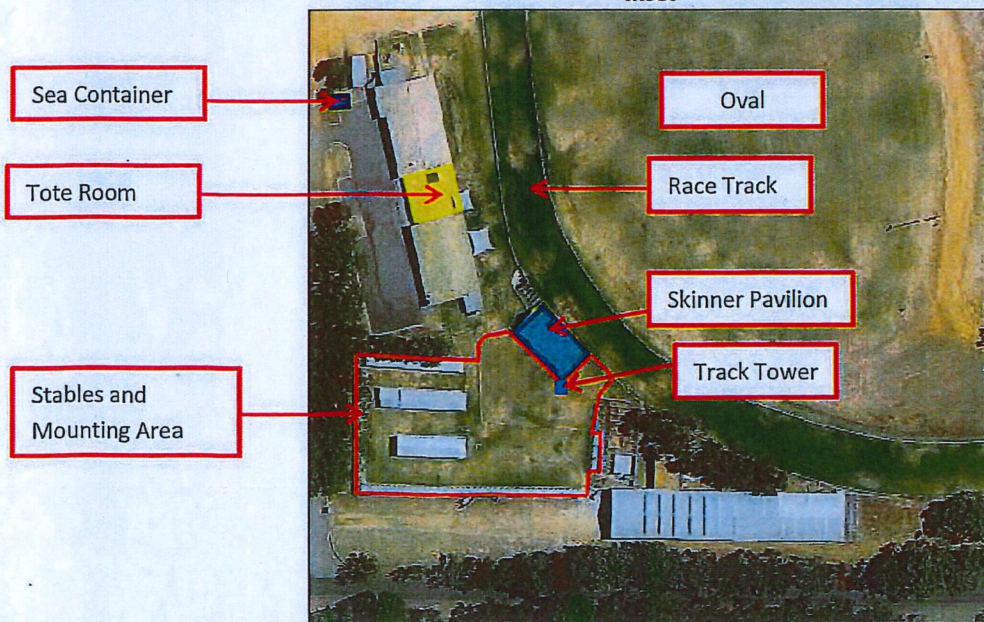
Managing Agents and Licensor's Agents

- 17.8. The Licensor may delegate any of its powers rights and authorities under this Licence to the Managing Agents or any officer thereof or to any Licensor's Agent.

Plan of Licensed Premises



Inset



Executed as a Deed dated _____

The Common Seal of **Shire of Plantagenet** }
was hereunto affixed pursuant to a }
resolution of the Council in the presence of: }

Cr Chris Pavlovich
Shire President

Rob Stewart
Chief Executive Officer

Executed in accordance with the }
Constitution of **Mount Barker Turf Club Inc:** }

Signed

Signed

Print Name and Authority to Sign

Print Name and Authority to Sign