

LEASE – MOUNT BARKER TENNIS CLUB

Draft Lease

Meeting Date: 28 March 2022

Number of Pages: 19

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Lease

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



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This Lease is made by:

SHIRE OF PLANTAGENET of PO Box 48 Mount Barker, Western Australia
(the Lessor)

and

MOUNT BARKER TENNIS CLUB Inc. of PO Box 266 Mount Barker, Western Australia
(the Lessee)

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

Particulars:

Item 1: Land

Part of Lot 152 McDonald Avenue, Mount Barker (as shown hatched in red on the attached plan).

Item 2: Leased Premises

The land and buildings.

Item 3: Commencement Date

The date of execution of this Lease as shown on the last page.

Item 4: Term

~~4~~ 5 years

Item 5: Option to Renew

~~Not Applicable~~ 5 Years

Item 6: Rent

\$10.00 per annum payable on demand.

Item 7: Permitted Use

Tennis Club

Grant of Lease:

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.

Where the Land is Crown land the grant of a lease is subject to the approval of the Minister of Lands.

The Lessor leases to the Lessee and the Lessee takes a lease of the Leased Premises subject to the provisions of this Lease. The Lessor and the Lessee agree:

1. Definitions

In this Lease:

- 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 public holiday in Perth, Western Australia;
- 1.3 **Fixtures and Fittings** include fixtures, fittings, accessories, doors, windows, roof, guttering, furnishings, carpet, paintwork, equipment, locks and keys;
- 1.4 **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;
- 1.5 **Lessee's Employees** means each of the Lessee's employees, contractors, agents, customers, subtenants, licensees or others (with or without invitation) who may be on the Leased Premises;
- 1.6 **Lessee's Property** includes all Fixtures and Fittings and any other items on the Leased Premises which are not the Lessor's;
- 1.7 **Lessor** means the Lessor and the successors, administrators and assigns of the Lessor; and
- 1.8 **Structure** or **Structural** refers only to the bare building and those parts of the building that support a load. Items of a non-structural nature include interior and exterior doors, window panes, cladding, light globes and covers, fittings and switches.

2. Interpretation

In this Lease unless the context otherwise requires:

- 2.1 words suggesting the singular include the plural and vice versa;
- 2.2 words suggesting any gender include any other gender;
- 2.3 a reference to a person includes a company, corporation, and unincorporated or incorporated association or statutory authority;
- 2.4 a reference to any document or instrument refers to that document or instrument as amended;
- 2.5 headings used for clauses, paragraphs, subparagraphs, Schedules and the table of contents are for ease of reference only and are not to affect the interpretation of this Lease;
- 2.6 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;

2.7 the term 'including' means including but not limited to; and

2.8 a reference to anybody is:

- a) if that body is replaced by another organisation, taken to refer to that organisation; and
- b) 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.

3. Term

Term

3.1 The Lessor leases the Leased Premises to the Lessee for the Term commencing on the Commencement Date.

Monthly Tenancy

3.2 If the Lessee continues to occupy the Leased Premises after the Term with the Lessor's consent then:

- a) the Lessee does so as a monthly tenant 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.

Option to Renew

3.3 If the Lessor and Lessee wish to effect the Option to Renew as specified at Item 5 of the Particulars (if applicable) and the Lessee:

- a) gives the Lessor notice in writing of such wish not less than 3 months but not more than 6 months before the end of the Term;
- b) (when giving such notice) has fully complied with every obligation under this Lease; and
- c) continues to comply fully with every obligation under this Lease until the end of the Term,

then the Lessor will lease the Leased Premises to the Lessee for the duration of the Option to Renew at an initial annual rent equal to the higher of:

- (i) the Rent payable immediately before the expiry of the Term; and (if any)
- (ii) the Rent payable immediately before the expiry of the Term as reviewed (at the sole option of the Lessor) on the date of commencement of that Option to Renew.

3.4 The Lessor and the Lessee shall validly execute a deed renewing this Lease incorporating the provisions of this Lease.

4. Payment of Rent, Rates and Services

Rent

- 4.1 The Lessee must pay the Rent to the Lessor upon written demand by the Lessor.
- 4.2 Each payment of Rent must be made with an additional amount equal to any goods and services, consumption or value added tax applying to that payment.

Rates

- 4.3 The Lessee must pay to the Lessor any Commonwealth, State or Local Government property rates, levies and taxes assessed against the Premises for each year of the Term or part thereof. The Lessor may, at its complete discretion, waive or donate all or part of the payment of property rates.

Services

- 4.4 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 Leased Premises.

5. Maintenance and Repair

Repair

- 5.1 The Lessee must:
- a) keep the Leased Premises including all lighting and electrical installations and all drainage and septic systems and all other Fixtures and Fittings in good repair and condition except for fair wear and tear, inevitable accident and inherent Structural defects;
 - b) repair and maintain such fences, grounds or garden beds as exist on the Leased Premises; and
 - c) fix any damage caused by the Lessee or the Lessee's Employees.
- 5.2 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.
- 5.3 Subject to the preceding clause 5.2, the Lessor is responsible for carrying out at its costs, all Structural repairs to the Premises.

Cleaning and Maintenance

- 5.4 The Lessee must:
- a) keep the Leased Premises clean, tidy and maintained in good order and condition and free of infectious diseases; and
 - b) do such things as reasonably required to eradicate, exterminate and keep the Leased Premises free from ants, termites, rodents, vermin, noxious weeds and other pests of any kind as required by any Authority (including the Lessor), and will ensure that pest exterminators are employed from time to

time for that purpose.

- 5.5 The Lessee shall be responsible for the regular pumping out of any grease traps located on the Premises.
- 5.6 The Lessor will maintain and service any air conditioning installed on the Leased Premises in accordance with the manufacturer's requirements at the Lessee's expense.
- 5.7 Without limiting the generality of clause 5.1, at the Lessee's expense, if demanded by the Lessor, the Lessee must paint, colour, varnish and paper to the reasonable satisfaction of the Lessor all parts of the Leased Premises as have been previously painted, coloured, varnished or papered on expiration of the Term.

Security

- 5.8 Any alarm system installed on the Leased Premises shall be maintained and kept fully operational at all times at the Lessee's expense, including any monitored service which is in operation.
- 5.9 The Lessee must:
- a) keep all closed circuit televisions cameras and equipment (if installed) fully operational at all times and maintained and/or repaired at the Lessee's expense; and
 - b) keep a minimum of seven days' images stored and made available to the Lessor and/or police on request.

Not to pollute

- 5.10 The Lessee must:
- a) not permit any rubbish or garbage to accumulate on the Leased Premises unless confined in suitable containers; and
 - b) not cause pollution in or contamination of the Leased Premises or any adjoining land by garbage, waste matter, oil and other pollutants whether by storm water or other run-off or arising from use of the Leased Premises.

Lessor's right to inspect and repair

- 5.11 The Lessor may:
- a) enter the Leased Premises to carry out any maintenance, repairs, alterations, installation of services or any other building work the Lessor may think necessary at any reasonable time upon 24 hours written notice to the Lessee. In an emergency, the Lessor may enter at any time without giving the Lessee notice;
 - b) enter the Leased Premises at all reasonable times upon 24 hours written notice to view the state of repair and condition of the Leased Premises and to leave notice of any lack of repair, neglect or defect for which the Lessee is liable, requiring the Lessee to make good to the satisfaction of the Lessor, within the time specified in the notice; and

- b) carry out any of the Lessee's obligations on the Lessee's behalf if the Lessee does not carry them out on time. If the Lessor does so, the Lessee must promptly pay the Lessor's costs.

Notice of damage or defect

5.12 The Lessee must promptly give the Lessor notice of:

- a) any damage to, defect or disrepair in the Leased Premises or the water or sewerage pipes, gas pipes, electrical wiring or any plant fittings or equipment in the Leased Premises; or
- b) any circumstances likely to cause any risk to the Leased Premises or any person.

6. Use of the Leased Premises

Permitted Use

6.1 The Lessee must only use the Leased Premises for the Permitted Use.

Restrictions on Use

6.2 The Lessee must not:

- a) disturb tenants or owners of property adjacent to the Leased Premises;
- b) do or omit to do anything which may be a nuisance under any Act, town/local planning scheme, ordinance, local law, regulation or written laws applicable to the use or occupation of the Leased Premises;
- c) alter, mark, deface, do any building work to, or remove any part of the Leased Premises without the Lessor's prior consent;
- d) do anything that may invalidate the Lessor's insurance or increase the Lessor's premiums;
- e) remove or alter any Bi Lock ® lock in any way;
- f) permit the use of any part of the Leased Premised for living or sleeping or for any unlawful purpose;
- g) allow smoking in any part of the Leased Premises;
- h) allow disorderly behaviour and indecent language on the Leased Premises;
- i) sell or permit the sale of any alcohol or alcoholic beverage on the Leased Premises except with the prior consent in writing of the Lessor and in accordance with a licence under the Liquor Control Act 1988; and
- j) store any quantity of alcohol or alcoholic beverage on the Leased Premises except in accordance with the prior consent in writing of the Lessor.

No warranty as to Use

6.3 The Lessor does not warrant that the Leased Premises:

- a) are suitable for the Permitted Purpose;
- b) may lawfully be used for the Permitted Purpose; or
- c) includes Fixtures and Fittings and services that are suitable for the Permitted Purpose.

Signage

6.4 The Lessee must not:

- a) affix or exhibit upon any part of the Leased Premises any placards, signs, notices, posters, signs, hoardings or advertisements without the written permission of the Lessor and such signage must be in accordance with any Council local laws and policies adopted from time to time; or
- b) affix or exhibit or permit to be affixed to or exhibited upon any part of the Leased Premises, signage that could be considered offensive, discriminatory, promoting smoking/tobacco or alcoholic products or contrary to the values of the Lessor.

Caveat

6.5 The Lessee must not lodge or register any absolute caveat in respect of the Leased Premises.

6.6 The Lessee irrevocably appoints the Lessor and every officer of the Lessor, severally, the agent and attorney of the Lessee to execute and register at the office of titles in Western Australia, a withdrawal of any absolute caveat registered by, or on behalf of the Lessee against any portion of the Leased Premises, the cost to be paid by the Lessee.

7. Assignment and Subletting

7.1 The Lessee must not assign, sublet or otherwise deal with its interest in the Leased Premises without the prior written consent of the Lessor.

7.2 Sections 80 and 82 of the Property Law Act 1969 (WA) do not apply to this Lease.

8. Insurances and Indemnities

Lessee's Insurance

8.1 The Lessee 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 \$20,000,000.00;
- b) a policy insuring the Lessee's Property kept on the Leased Premises to their full replacement value against fire and extraneous risks including but not limited to water, storm and rainwater damage; and

- c) a policy covering the breakage of any glass on the Leased Premises including any plate glass. The Lessee agrees that all money received under the insurance policy will be expended in reinstating the plate 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.

8.2 All policies under clause 8.1 must be acceptable to the Lessor and endorsed to note the interest of the Lessor as the landlord of the Leased Premises.

Lessor's Insurance

8.3 The Lessor will maintain insurance for the Lessor's buildings. The Lessee will be responsible for any loss or cost suffered by the Lessor:

- 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 Lessee) where the Lessor determines that the cost of such repairs is less than the Lessor's excess.

Proof of insurance policies

8.4 The Lessee must give the Lessor evidence of its insurance if the Lessor asks for it.

Compliance with insurance regulations

8.5 The Lessee must:

- a) comply with insurance, sprinkler and fire alarm regulations as they relate to the use of the Leased Premises;
- b) pay to the Lessor the cost of any alterations to any sprinkler or fire alarm installation which may be 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; and
- c) pay to the Lessor on demand the Lessor's costs of carrying out:
 - (i) any testing and servicing of fire equipment and systems and of electrical equipment and light fittings (including testing and tagging and maintenance of Residual-Current Devices) which may be required by law or recommended by any relevant authority or the manufacturer; and
 - (ii) any alteration to any fire and electrical 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.

8.6 Subject to clause 8.5, the Lessor is responsible for the cost of installing any additional or new sprinkler, fire alarm or electrical system which may become necessary by reason of a change or alteration to the regulations or legislation governing fire control or electrical services in the Leased Premises, the regulations of the Insurance Council of Australia or the requirements of the Lessor's insurer.

Lessee's release and indemnity

8.7 The Lessee:

- a) occupies and uses the Leased Premises at its own risk;
- b) carries out any building work (with the consent of the Lessor) on the Leased Premises at its risk;
- c) releases the Lessor from and indemnifies it against all claims for damages, loss, injury or death:
 - (i) whether or not it is caused by the Lessee's negligence or default if it:
 - A. occurs on the Leased Premises; or
 - B. arises from the overflow or leakage of water from the Leased Premises,
except to the extent that it is caused by the Lessor's deliberate act or negligence; and
 - (ii) if it arises from the negligence or default of the Lessee or the Lessee's Employees, except to the extent that it is caused by the Lessor's deliberate act or wilful negligence.

8.8 If applicable, 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 Leased Premises by the Lessee.

9. Occupational Safety and Health Act

The Lessee:

- 9.1 acknowledges and agrees that for the purpose of the Occupational Safety and Health Act 1984 (WA) (Act) the Lessee has the control of the Leased Premises and all plant and substances on the Leased Premises; and
- 9.2 releases and indemnifies the Lessor from and against any claim or obligation or liability of the Lessor 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 Lessor's deliberate act or negligence.

10. Default and Termination

Default

10.1 The Lessee defaults under this Lease if:

- a) the rent or any other moneys owing to the Lessor under this Lease are unpaid after 14 days written demand for payment has been made by the Lessor;
- b) the Lessee breaches any other term of this Lease and such breach is unremedied within 10 Business Days of notice of breach having been served on the Lessee;

- c) repairs required by any notice given by the Lessor under this Lease are not completed within the time frame specified in the notice;
- d) the Lessee becomes an externally-administrated body corporate within the meaning of the Corporations Act 2001 (Cth); or
- e) the Lessee abandons or vacates the Leased Premises.

Forfeiture of Lease

- 10.2 If the Lessee defaults and does not remedy the default when the Lessor requires it to do so, the Lessor may do any one or more of the following:
- a) re-enter and take possession of the Leased Premises and by notice to the Lessee, terminate this Lease;
 - b) terminate this Lease by notice in writing to the Lessee;
 - b) exercise any of its other legal rights; or
 - c) recover from the Lessee any loss suffered by the Lessor due to the Lessee's default.

Waiver

- 10.3 No waiver by the Lessor is effective unless it is in writing.
- 10.4 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 of any breach of any provision in this Lease.
- 10.5 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 all the Lessee's obligations under this Lease.

11. Termination of Term

Tenant's obligations

- 11.1 On termination the Lessee must:
- a) vacate the Leased Premises and give it back to the Lessor in good repair and condition in accordance with the Lessee's obligations in this Lease;
 - b) remove all of the Lessee's Property from the Leased Premises;
 - c) repair any damage caused by removal of the Lessee's Property and leave the Leased Premises in good repair and condition; and
 - d) return any keys held by it or the Lessee's Employees.
- 11.2 The Lessor may (but is not obliged to) make a condition report at the commencement and termination of the Lease and such report will be deemed to be an accurate record of the condition of the Leased Premises and the Fixtures and Fittings as at the date of the report.

11.3 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, air conditioning equipment, fire equipment or any of the appurtenances in the Leased 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.

Failure to remove Lessee's Property

11.4 If the Lessee does not remove the Lessee's Property at the end of the Term, the Lessor may:

- a) remove and store the Lessee's Property at the Lessee's risk and expense; or
- b) treat the Lessee's Property as abandoned, in which case title in the Lessee's Property passes to the Lessor who may deal with it as it thinks fit without being liable to account to the Lessee.

Damage to the Leased Premises

11.5 If the Leased 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 without prejudice to any rights which may have accrued to either party prior to termination.

12. Essential and Additional Terms and Conditions

Essential Terms

12.1 The Lessee and the Lessor agree that the essential terms are;

- a) to pay Rent, rates and services (clause 4);
- b) to repair (clause 5.1);
- b) to use the Leased Premises for only the Permitted Use (clause 6.1);
- c) not to assign, sublet or deal with the Lease without consent (clause 7); and
- d) to keep current insurance and indemnities (clause 8).

Additional terms, covenants and conditions

12.2 The additional terms, covenants and conditions in Schedule 1 are taken to be incorporated in, and form part of, this Lease and if there is any inconsistency between the additional terms and conditions and any provision of this Lease then the additional terms and conditions will prevail to the extent of the inconsistency.

13. Goods and Services Tax

Definitions in this clause

13.1 In this clause the following terms have the meanings ascribed to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth): **Consideration; GST; Recipient; Supply; and Tax Invoice.**

Consideration is exclusive of GST

13.2 The Consideration for a Supply under this Lease is exclusive of any GST imposed on the Supply.

Recovery of GST

13.3 If a Supply under this Lease 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.

14. Notices

In Writing

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

Notice of Address

14.2 The Lessee must promptly notify the Lessor of its address, facsimile number or email address and update the notice if any changes occur.

Service of Notice on Lessee

14.3 The lessor may serve a notice on the Lessee by:

- a) giving it to the Lessee personally;
- b) sending it to the Lessee's facsimile number or email address; or
- c) posting it to the Lessee's last known registered office, place of business or residence.

14.4 A notice or demand posted to the Lessee is to be taken to be duly served at the expiration of 72 hours after the time of posting.

Service of Notice on Lessor

14.5 The Lessee may serve a notice on the Lessor by leaving it at, or posting, emailing or faxing it to the address or number of the Lessor as described in this Lease or as the Lessor may provide by written notice to the Lessee.

15. Annual Financial Accounts

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

16. Costs

16.1 The Lessor will pay the costs of preparation of the Lease.

16.2 The lessee must pay the Lessor's reasonable legal fees and outlays:

- a) relating to any assignment or subletting; and
- b) arising from any breach of this Lease by the Lessee.

17. Lessor's Consent

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

- 17.1 the Lessor must consider the request promptly and be reasonable in giving or refusing its consent or approval;
- 17.2 the Lessor may require the Lessee to comply with any reasonable conditions before giving its consent; and
- 17.3 it is not effective unless in writing.

SCHEDULE 1

ADDITIONAL TERMS AND CONDITIONS

1. The Lessee will manage the use of the Leased Premises to ensure that the courts are used as extensively as possible by the Mount Barker Tennis Club Inc. and the general public.

2. For clarity and not to limit the generality of the Lease:

2.1 The Lessor is responsible for repairs of any:

- (i) hot water system;
- (ii) sewer or septic system between exit of building to the system (excluding non-structural blockages);
- (iii) electrical switchboard; and
- (iv) air-conditioning units (excluding maintenance as required by the manufacturer).

2.2 The Lessee is responsible for all repairs required to:

- (i) windowpanes;
- (ii) doors;
- (iii) internal plumbing;
- (iv) septic tank pumping;
- (v) light fittings;
- (vi) overloaded fuses (unless caused by wiring defects);
- (vii) fencing; and
- (viii) floor coverings.

2.3 The Lessee is responsible for all:

- (i) repainting;
- (ii) cleaning gutters;
- (iii) pump out septics as required;
- (iv) unblocking plumbing; and
- (v) replacement of all light globes.

Plan – Leased Premises



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

1:837



Execution

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

John Fathers
Acting Chief Executive Officer

Executed in accordance with the Constitution of)
MOUNT BARKER TENNIS CLUB Inc.)

Signed

Signed

Print Name and Authority to Sign

Print Name and Authority to Sign