

# 7A Legislative Building Control

## Delegate

Manager Property Services

## Delegated Authority

Pursuant Section 127 of the Building Act 2011, the Manager Property Services or person qualified acting in that role is authorised:

1. to approve or refuse to approve permits in accordance with Sections 20, 21, 58 and 65;
2. to issue Orders under Sections 110, and 117; and
3. to administer the provisions of s245A. Check relevant section

## Further delegation

Nil

## Legislation

Building Act

## Duration

Indefinite

## Record

Register of Licences Issued  
Central Records  
Property Files

## Date originally adopted/amended

22 July 1997 (Report P83 97)  
25 November 2003 (Report E106.03)  
24 June 2008 (Report CP27.08)  
30 June 2009 (Report CP29.09)  
24 May 2011 (Report CP20.11)

## Review history – no changes

26 October 2004 (Report E110.04)  
22 June 2010 (Report CP19.10)

## **7B Endorsement of Strata Titles**

This is deleted as it is not required – all relevant delegations are in 7a

### **Delegate**

Manager Property Services

### **Delegated authority**

Under the provisions of Section 23(5) of the Strata Titles Act and Council's resolution of May 26, 1994, the Manager Property Services is authorised to approve and sign Strata Title Certificates which come within the boundaries of the Municipality, subject to any such Certificate not being issued until the Manager Property Services is satisfied that the proposal has been inspected and found to comply with any approved plans and any Strata Title requirements.

### **Further delegation**

Director Development Services

### **Legislation**

Strata Titles Act

### **Duration**

Indefinite

### **Record**

Central Records  
Property Files

### **Date originally adopted/amended**

22 April 1997 (Report P83.97)  
13 November 2001 (Report E159.01)

### **Review history - no changes**

26 October 2004 (Report E110.04)  
24 June 2008 (Report CP27.08)  
30 June 2009 (Report CP29.09)  
22 June 2010 (Report CP19.10)  
24 May 2011 (Report CP20.11)

## **9B Prosecution Officers**

### **Delegate**

Chief Executive Officer

### **Delegated authority**

The Chief Executive Officer is authorised to appoint Officers of the Council for the purpose generally to represent the City of Nedlands and the Council in all respects as though one or other were the party concerned in the proceedings in the Court of Petty Sessions relating to alleged breaches of the City of Nedlands Parking Facilities Local Law, City of Nedlands Thoroughfares Local Law, the Dog Act 1976, as amended, the Litter Act 1979-1981, the Bush Fires Act 1954-1977, as amended and all other Council Local Laws or any courts relating to non-compliance in relation to Planning and Building approvals and any development without approval in relation to the Local Government Act 1995 and related regulations, the Building Act 2011, Building Code of Australia and Planning and Development Act 2005 for all development compliance.

### **Further Delegation**

- a) for all matters under the City of Nedlands Parking Facilities Local Law, City of Nedlands Thoroughfares Local Law, the Dog Act 1976, as amended, the Litter Act 1979-1981, the Bush Fires Act 1954-1977, as amended and all other Council Local Laws, the Manager Corporate Services; and
- b) for all Development Non Compliance matters, the following:
  - Director Development Services;
  - Manager Property Services;
  - Senior Ranger;
  - Manager Statutory Planning; and
  - Manager Strategic Planning
  - Civil Compliance Officer

### **Legislation**

Local Government Act 1995

### **Duration**

Indefinite

### **Record**

Central Records

**D72.11 – Attachment 3**  
9B Prosecution Officers

Prosecutions File  
Complaints Registry  
**Date originally adopted/amended**

22 July 1997 – Report C108.97  
23 October 2001 (Report C101.01)  
24 June 2008 (Report CP27.08)  
9 September 2008 (Report CP42.08)  
30 June 2009 (Report CP29.09)  
22 June 2010 (Report CP19.10)

**Review history – no changes**

14 November 2000 (Report C140.00)  
23 October 2001 (Report C101.01)  
26 November 2002 (Report C94.02)  
25 November 2003 (Report C74.03)  
23 November 2004 (Report C65.04)  
24 May 2011 (Report CP20.11)

DRAFT

DRAFT 24.10.2011

# Lease of a Portion of Reserve 19349: Allen Park Upper Pavilion and Adjacent Toilets & Changerooms

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City of Nedlands

Associates Rugby Union Football Club (Inc)

## **D74.11 – Attachment 1**

Proposed Lease of the Allen Park Upper Pavilion and  
Adjacent Change rooms & toilets between the City  
and Associates Rugby Union Football Club (Inc)



**McLEODS**

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# Table of Contents

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<b>Copyright notice</b>	<b>i</b>
<b>Details</b>	<b>1</b>
<b>1. Defined terms and interpretation</b>	<b>1</b>
1.1 Defined terms	1
1.2 Interpretation	3
1.3 Headings	4
<b>2. Conditions</b>	<b>5</b>
<b>3. Grant of lease</b>	<b>5</b>
<b>4. Quiet enjoyment</b>	<b>5</b>
<b>5. Rent and other payments</b>	<b>5</b>
5.1 Rent	5
5.2 Outgoings	5
5.3 Interest	6
5.4 Costs	6
5.5 Payment of Money	6
<b>6. Accrual of amounts payable</b>	<b>6</b>
<b>7. Insurance</b>	<b>6</b>
7.1 Insurance to be effected	6
7.2 Building Insurance to be effected and paid by Lessee	7
7.3 Details and receipts	7
7.4 Not to invalidate	7
7.5 Report	7
7.6 Settlement of claim	7
7.7 Lessor as attorney	7
<b>8. Indemnity</b>	<b>8</b>
8.1 Lessee responsibilities	8
8.2 Indemnity	8
8.3 Obligations Continuing	8
8.4 No indemnity for Lessor's negligence	9
8.5 Release	9
<b>9. Limit of Lessor's liability</b>	<b>9</b>
9.1 No liability for loss on Premises	9
9.2 Limit on liability for breach of Lessor's covenants	9
<b>10. Maintenance, repair and cleaning</b>	<b>10</b>
10.1 Maintenance	10
10.2 Repair	10
10.3 No obligation to Lessor to repair or maintain	10
10.4 Cleaning	10
10.5 Maintain surroundings	10
10.6 Pest control	11
10.7 Structural state of Premises	11
10.8 Maintenance fund	11
<b>11. Alterations</b>	<b>12</b>
11.1 Restriction	12
11.2 Consent	12

11.3	Cost of Works	13
11.4	Conditions	13
<b>12.</b>	<b>Use</b>	<b>13</b>
12.1	Restrictions on use	13
12.2	No Warranty	14
12.3	Premises Subject to Restriction	14
12.4	Indemnity for Costs	14
<b>13.</b>	<b>Lessor's right of entry</b>	<b>14</b>
13.1	Entry on Reasonable Notice	14
13.2	Costs of Rectifying Breach	15
<b>14.</b>	<b>Statutory obligations and notices</b>	<b>15</b>
14.1	Comply with Statutes	15
14.2	Indemnity if Lessee Fails to Comply	15
<b>15.</b>	<b>Report to Lessor</b>	<b>15</b>
<b>16.</b>	<b>Default</b>	<b>15</b>
16.1	Events of Default	15
16.2	Forfeiture	16
16.3	Lessor may remedy breach	16
16.4	Acceptance of Amount Payable By Lessor	16
16.5	Essential Terms	17
16.6	Breach of Essential Terms	17
<b>17.</b>	<b>Damage or destruction</b>	<b>17</b>
17.1	Damage or destruction	17
17.2	Lessor not to unreasonably withhold its approval to plans	18
17.3	Insurance proceeds	18
<b>18.</b>	<b>Option to renew</b>	<b>18</b>
<b>19.</b>	<b>Holding over</b>	<b>18</b>
<b>20.</b>	<b>Restore premises</b>	<b>19</b>
<b>21.</b>	<b>Yield up the premises</b>	<b>19</b>
21.1	Peacefully surrender	19
21.2	Clause 21.1 to survive termination	19
<b>22.</b>	<b>Removal of property from Premises</b>	<b>19</b>
22.1	Remove property prior to termination	19
22.2	Lessor can remove property on re-entry	19
<b>23.</b>	<b>Hire of Premises</b>	<b>19</b>
23.1	Casual Hire or Regular Hire Only	19
23.2	Lessee remains responsible for Premises at all times	20
<b>24.</b>	<b>Assignment, sub-letting and charging</b>	<b>20</b>
24.1	No assignment or sub-letting without consent	20
24.2	Lessor's Consent to Assignment and Sub-letting	20
24.3	Where sublessee is a community group	20
24.4	Consents of Assignee Supplementary	20
24.5	<i>Property Law Act 1969</i>	20
24.6	Costs for assignment and sub-letting	21
24.7	No mortgage or charge	21
<b>25.</b>	<b>Acts by agents</b>	<b>21</b>
<b>26.</b>	<b>Governing law</b>	<b>21</b>



<b>27. Statutory powers</b>	<b>21</b>
<b>28. Notice</b>	<b>21</b>
28.1 Form of delivery	21
28.2 Service of notice	21
28.3 Signing of notice	22
<b>29. Severance</b>	<b>22</b>
<b>30. Disputes</b>	<b>22</b>
30.1 Appointment of arbitrator	22
30.2 Payment of amounts payable to date of award	22
<b>31. Variation</b>	<b>22</b>
<b>32. Moratorium</b>	<b>22</b>
<b>33. Further assurance</b>	<b>23</b>
<b>34. Payment of money</b>	<b>23</b>
<b>35. Waiver</b>	<b>23</b>
35.1 No general waiver	23
35.2 Partial exercise of right power or privilege	23
<b>36. Goods and services tax</b>	<b>23</b>
36.1 Definitions	23
36.2 Lessee to pay GST	23
36.3 Consideration in Kind	24
<b>37. Commercial Tenancy Act</b>	<b>24</b>
<b>38. Caveat &amp; Registration of lease</b>	<b>24</b>
38.1 Registration of Lease	24
38.2 No absolute caveat	24
38.3 CEO & Lessor as attorney	24
<b>39. Indemnity and ratification</b>	<b>25</b>
39.1 Ratification	25
39.2 Indemnity	25
<b>40. Prior notice of proposal to change rules</b>	<b>25</b>
<b>41. Provision of information</b>	<b>25</b>
<b>42. Alcohol</b>	<b>26</b>
42.1 Consumption of alcohol	26
42.2 Liquor licence	26
<b>43. Minimise nuisance to neighbours</b>	<b>26</b>
<b>44. Lessor's consent</b>	<b>27</b>
<b>45. Re-development of Allen Park</b>	<b>27</b>
<b>46. Additional terms, covenants and conditions</b>	<b>27</b>
<b>Schedule</b>	<b>28</b>
<b>Signing page</b>	<b>30</b>
<b>Annexure 1 – Sketch of Premises</b>	<b>31</b>

# Details

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## Parties

### City of Nedlands

of 71 Stirling Highway, Nedlands, Western Australia, 6009  
(Lessor)

### Associates Rugby Union Football Club (Inc)

of PO Box 10, Nedlands, Western Australia, 6909  
(A0620036G)  
(Lessee)

## Background

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

## Agreed terms

### 1. Defined terms and interpretation

#### 1.1 Defined terms

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

**Alterations** means any of the acts referred to in **clauses 11.1(1)(b); 11.1(1)(c), 11.1(1)(d) and 11.1(1)(e);**

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

**Authorised Person** means –

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

**Casual Hire** means the Hire of the Premises (or part thereof) on an irregular basis, for the purpose of temporary or occasional use of the Premises (or part thereof). Casual Hire does not require the entering into a formal legal agreement, but will require hire application form to be completed. Casual Hire will mean that the hirer does not have exclusive possession of the Premises, and the Premises will be available for Hire by other hirers at other times. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

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

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

**Contaminated Sites Act** means the *Contaminated Sites Act 2003 (WA)*.

**DEC** means the Department of Environment and Conservation of Western Australia;

**Environmental Contamination** has the same meaning as the word “contaminated” in the Contaminated Sites Act;

**EPA** means the Environment Protection Agency of Western Australia;

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

**Further Terms** means the further terms specified in **Item 3** of the Schedule;

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

**Hire** means the hiring out of the Premises (or part thereof) on a temporary basis, for the purpose of providing them with temporary or shared use of the Premises. The Hire of the Premises may be in the form of Casual Hire or Regular Hire. Hire would normally be applied for by filling out a simple hire application form, and would not require a legal lease or sub-leasing document. Hire means that the hirer does not have exclusive possession of the Premises (or part thereof), and the Premises will remain available for Hire by other hirers at other times. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

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

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

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

**Lessee’s Agents** includes:

- (a) the sublessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Leased Premises by the authority of a person specified in paragraph (a).

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

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

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

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

**Order** means the vesting order published in the *Government Gazette* under the former *Land Act 1933* (and which now has the status of a Management Order made by the Minister under section 46 of the *Land Administration Act 1997*), or the Management Order made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of Park & Recreation;

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

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

**Regular Hire** means the hire of the Premises (or part thereof) on a repeated basis (such as hire for a full year at the same time each week), for the purpose of regular use of the Premises (or part thereof). Regular Hire will not require the entry into a legal agreement, beyond a hire application form. With the exception of storage areas, the Premises hired for use would normally be available for hire at other times by other hirers. The Lessee may grant a regular hirer exclusive use of a storage area, without affecting the hirer's classification as a hirer rather than a permanent tenant or sub-tenant requiring a formal lease agreement and compliance with **clause 24** of the Lease. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-letting or Sub-leasing;

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

**Schedule** means the Schedule to this Lease;

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

**Sub-leasing or Sub-letting** means the use of the Premises (or part thereof) by an organisation or individual on a long-term basis, for the purpose of providing them with security of tenure. Sub-leasing or Sub-letting would normally be for the purpose of granting an individual or organisation exclusive use of the Premises (or part thereof). If the Lessee wishes to sub-lease or sublet the Premises (or part thereof), it must comply with the requirements of **clause 24** of this Lease. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

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

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

## 1.2 Interpretation

In this Lease, unless expressed to the contrary -

- (a) words importing -
  - (i) the singular includes the plural and vice versa; and
  - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
  - (i) a natural person includes a body corporate or local government;
  - (ii) a body corporate or local government includes a natural person;

- (iii) a professional body includes a successor to or substitute for that body;
  - (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
  - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
  - (vi) a right includes a benefit, remedy, discretion, authority or power;
  - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (viii) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to -
    - (A) both express and implied provisions; and
    - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
  - (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
  - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- (d) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include -
- (i) covenants not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
  - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

### 1.3 Headings

Except in the Schedule, headings do not affect the interpretation of this Lease.

## 2. Conditions

This Lease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*.

## 3. Grant of lease

The Lessor, subject to **clause 2** of this Lease, leases to the Lessee the Premises for the Term subject to -

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Covenants.

## 4. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the management body of the Premises under the Order, and subject to the performance and observance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

## 5. Rent and other payments

The Lessee covenants with the Lessor –

### 5.1 Rent

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

### 5.2 Outgoings

- (1) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges, assessed or incurred in respect of the Premises -
  - (a) local government rates, services and other charges, including but not limited to rubbish collection charges and the emergency services levy;
  - (b) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
  - (c) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring or telephone connection;
  - (d) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 5.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

### 5.3 Interest

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

### 5.4 Costs

- (1) To pay to the Lessor on demand -
  - (a) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;
  - (b) all registration fees in connection with this Lease; and
  - (c) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (2) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to -
  - (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
  - (b) any breach of covenant by the Lessee or an Authorised Person;
  - (c) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
  - (d) any work done at the Lessee's request; and
  - (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 5.4** or any matter arising out of this Lease.

### 5.5 Payment of Money

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

## 6. Accrual of amounts payable

Amounts Payable accrue on a daily basis.

## 7. Insurance

### 7.1 Insurance to be effected

The Lessee must effect and maintain with insurers approved by the Lessor in the joint names of the Lessor and the Lessee for their respective rights and interests in the Premises for the time being adequate public liability insurance for a sum not less than the sum set out at Item 9 of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

## **7.2 Building Insurance to be effected and paid by Lessee**

The Lessee will effect and maintain insurance of the building on the Premises, with an insurance company acceptable to the Lessor, and to a value agreed by the parties.

## **7.3 Details and receipts**

In respect of the insurances required by **clause 7.1** and **clause 7.2** the Lessee must -

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

## **7.4 Not to invalidate**

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

- (a) render any insurance effected under **clause 7.1** or **7.2** on the Premises, or any adjoining premises, void or voidable;
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

## **7.5 Report**

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

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

## **7.6 Settlement of claim**

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clauses 7.1** and **7.2**. The Lessor agrees to act reasonably when settling or compromising any claim, and to have due consideration to the Lessee's interests.

## **7.7 Lessor as attorney**

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

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clauses 7.1** and **7.2**;



- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clauses 7.1 and 7.2**;
  - (c) to give good and effectual receipts and discharges for the insurance; and
  - (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.
- (2) The Lessor when exercising its powers pursuant to **clause 7.7**, agrees to act reasonably and to have due consideration to the Lessee's interests.

## 8. Indemnity

### 8.1 Lessee responsibilities

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

### 8.2 Indemnity

- (1) The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor, in respect of:
  - (a) any loss whatsoever (including loss of use);
  - (b) injury or damage of, or to, any kind of property or thing; and
  - (c) the death of, or injury suffered by, any person,
 caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:
  - (d) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
  - (e) any work carried out by or on behalf of the Lessee on the Premises;
  - (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
  - (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
  - (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
  - (i) an act or omission of the Lessee.

### 8.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 8.2** will be reduced by the extent of such payment.
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

#### **8.4 No indemnity for Lessor's negligence**

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

#### **8.5 Release**

(1) The Lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor from:
  - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by;
  - (ii) loss of or damage to the Premises or personal property of the Lessee; and
  - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

(2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

### **9. Limit of Lessor's liability**

#### **9.1 No liability for loss on Premises**

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring, except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

#### **9.2 Limit on liability for breach of Lessor's covenants**

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the management body of the Premises under the Order.
- (2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

## 10. Maintenance, repair and cleaning

### 10.1 Maintenance

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

### 10.2 Repair

The Lessee must promptly repair at its own expense to the satisfaction of the Lessor any damage to the Premises including damage of a structural nature, regardless of how it is caused.

### 10.3 No obligation to Lessor to repair or maintain

- (1) The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements comprising the Premises, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Premises.
- (2) Any further development proposed on the Premises during the Term shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained the prior consent of the Lessor, and all necessary statutory approvals.

### 10.4 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

### 10.5 Maintain surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings, including but not limited to any flora, gardens lawns, shrubs, hedges and trees.
- (2) If there is any remnant natural bushland in the surrounds the Lessee must not remove or do anything to damage such bushland without written consent from the Lessor and the Lessee must maintain any such bushland, at its cost, in accordance with a maintenance programme agreed with the Lessor's Parks Manager.
- (3) Subject to paragraph (2), any pruning of trees must be undertaken by a qualified tree surgeon.
- (4) Subject to paragraph (2), if any flora, trees or lawn dies the Lessee must replace the flora, trees or lawn at its own expense.

- (5) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require.
- (6) Subject to paragraph (2), the Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

#### **10.6 Pest control**

- (1) The Lessee must keep the Premises free of any vermin and the cost of extermination will be borne by the Lessee.
- (2)
  - (a) The Lessee must undertake, annually, an inspection by a licensed pest controller for termite infestation;
  - (b) This inspection must be carried out and any pest control treatment required as a result of the inspection must be undertaken by a licensed pest controller within two weeks of the inspection;
  - (c) The Lessee must provide to the Lessor a copy of the certificate issued by the licensed pest controller by May 1 annually; and
  - (d) All costs and expenses arising from the inspection and any work undertaken as a result will be the responsibility of the Lessee.

#### **10.7 Structural state of Premises**

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

#### **10.8 Maintenance fund**

- (1) The intention of this subclause is to ensure that the Lessee establishes a reserve fund and sets aside sufficient funds to maintain the Premises in accordance with this Lease and for the replacement of any structures or improvements on the Premises which will require eventual replacement. The fund may also be used for capital development of the Premises.
- (2) The Lessee must -
  - (a) establish and maintain a fund to be retained under its own management for the purpose of providing adequate funds for ongoing maintenance of the Premises and to allow for the depreciation of structures or improvements forming part of the Premises (**the Fund**);
  - (b) keep the Fund in an interest bearing bank account as a separate fund to other monies held by the Lessee;
  - (c) ensure that the Fund is clearly identified, as a distinct and separate fund in the Lessee's accounting records and is reported as such in all general financial statements produced by the Lessee;
  - (d) ensure that the Fund is audited in accordance with the Lessee's audit requirements and that the Lessor is provided at least once in each year of the Term with a copy of an audited financial statement showing the amount in the Fund; and
  - (e) make regular contributions to the Fund in accordance with this subclause (**Fund Contributions**).

- (3) The amount of money the Lessee will deposit in the Fund by the first anniversary date is specified in **0** of the Schedule.
- (4) The amount of money the Lessee will deposit in the Fund each subsequent year and frequency of Fund contributions will be reviewed annually.
- (5) Before each annual review of the Fund Contributions, the Lessor's Building Services will meet with the Lessee to review the maintenance requirements for the Premises. The intention of the meeting will be for the Lessor's Building Services and the Lessee to reach agreement on the amount and frequency of Fund Contributions for the next twelve months.
- (6) The Lessee must only use the Fund for purposes and on specific items agreed between the parties.
- (7) The Lessee agrees to use the Fund to rectify all items identified by the Lessor as in need of repair, replacement or reconstruction.
- (8) The Lessee agrees to use the Fund to rectify all items identified by the Lessor as in need of repair, replacement or reconstruction, in preference to using the Fund for capital development of the Premises. The Fund may be used for capital development of the Premises, but only if all maintenance items as identified by the Lessor have been completed.

## 11. Alterations

### 11.1 Restriction

- (1) The Lessee must not without prior written consent –
  - (a)
    - (i) from the Lessor;
    - (ii) from any other person from whom consent is required under this Lease;
    - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;
  - (b) install any new signage;
  - (c) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises;
  - (d) remove alter or add to any fixtures, fittings or facilities in or on the Premises; or
  - (e) subject to the performance of the Lessee's obligations in **clause 10**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

### 11.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 11.1** the Lessor may -
  - (a) consent subject to conditions; and
    - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
    - (ii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and

- (b) if the Lessor consents to any matter referred to in **clause 11.1** -
  - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
  - (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

### 11.3 Cost of Works

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

### 11.4 Conditions

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

- (a) carry out those other works at the Lessee's expense; or
  - (b) permit the Lessor to carry out those other works at the Lessee's expense,
- in accordance with the Lessor's requirements.

## 12. Use

### 12.1 Restrictions on use

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

- (a)
  - (i) use the Premises or any part of it for any purpose other than for the purposes for which the Premises are held by the Lessor, as set out at **Item 6** of the Schedule; or
  - (ii) use the Premises for any purpose which is not permitted under any town planning scheme or any law relating to health;
- (b) do or carry out on the Premises any harmful, offensive or illegal act, matter or thing;
- (c) do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties;
- (d) store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions -
  - (i) any such storage must comply with all relevant statutory provisions;
  - (ii) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
  - (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
  - (iv) upon the request of the Lessor, the Lessee will provide a manifest of all dangerous compounds or substances stored on the Premises;
- (e) do any act or thing which might result in excessive stress or harm to any part of the Premises; or

- (f) display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

## **12.2 No Warranty**

The Lessor gives no warranty -

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

## **12.3 Premises Subject to Restriction**

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

## **12.4 Indemnity for Costs**

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 12**.

# **13. Lessor's right of entry**

## **13.1 Entry on Reasonable Notice**

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

- (a)
  - (i) at all reasonable times;
  - (ii) with or without workmen and others; and
  - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes -
  - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
  - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
  - (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
  - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this **clause 13.1(b)(iv)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

### **13.2 Costs of Rectifying Breach**

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 13.1(b)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

## **14. Statutory obligations and notices**

### **14.1 Comply with Statutes**

The Lessee must -

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 12**;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

### **14.2 Indemnity if Lessee Fails to Comply**

The Lessee indemnifies the Lessor against -

- (a) failing to perform, discharge or execute any of the items referred to in **clause 14.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 14.1**.

## **15. Report to Lessor**

The Lessee must immediately report to the Lessor -

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

## **16. Default**

### **16.1 Events of Default**

A default occurs if -

- (a) the Lessee is in breach of any of the Lessee's Covenants for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;



- (b) the association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the *Associations Incorporation Act 1997* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the permitted purpose for six month period; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

## 16.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 16.1** the Lessor may -

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

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

## 16.3 Lessor may remedy breach

If the Lessee -

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

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

## 16.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers conferred on the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

## 16.5 Essential Terms

Each of the Lessee's Covenants in **clauses 5** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **10** (Maintenance, Repair and Cleaning), **12** (Use), **24** (Assignment, Subletting and Charging), **36** (Goods and Services Tax), **42** (Alcohol) and **43** (Minimise Nuisance to Neighbours) is an essential term of this Lease but this clause **16.5** does not mean or imply that there are no other essential terms in this Lease.

## 16.6 Breach of Essential Terms

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

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

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

- (d) the Lessee agrees that the covenant set out in this **clause 16.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 16.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

## 17. Damage or destruction

### 17.1 Damage or destruction

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

- (a) may within two (2) months of the destruction or the damage terminate the Term with immediate effect by giving Notice to the Lessor; or

- (b) may elect to rebuild the Premises in which case the Lessee must within six months of the destruction or the damage submit plans for the Lessor's approval of a suitable replacement building:
  - (i) if such plans are approved by the Lessor, the Lessee must build the replacement building in accordance with the approved plans within two years from the date the Lessor provides approval; and
  - (ii) if such plans are not approved by the Lessor, the Lessor or the Lessee may terminate the Lease with immediate effect by giving Notice to the other party;

### **17.2 Lessor not to unreasonably withhold its approval to plans**

- (1) Subject always to paragraph (2) below, the Lessor covenants and agrees in its capacity as Lessor not to unreasonably withhold its consent to the plans referred to **clause 17.1(b)**.
- (2) Notwithstanding any other provision of this Lease, the parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any written law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

### **17.3 Insurance proceeds**

- (1) If the Lessee terminates the Term in accordance with **clause 17.1** all insurance proceeds in respect of the Premises will be paid to and retained by the Lessor; or
- (2) If the Lessee rebuilds the Premises, all insurance proceeds will be applied to the rebuilding with any shortfall paid by the Lessee.

## **18. Option to renew**

If the Lessee at least one month, but not earlier than 12 months, prior to the date for commencement of the First Further Term or Second Further Term (as the case may be) gives the Lessor a Notice to grant the First Further Term or Second Further Term (as the case may) and -

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

the Lessor shall grant to the Lessee a lease for the First Further Term or the Second Further Term (as the case may be) at the Rent and on terms and conditions similar to this Lease other than this **clause 18** in respect of any Further Terms previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

## **19. Holding over**

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth

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

## 20. Restore premises

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

## 21. Yield up the premises

### 21.1 Peacefully surrender

On Termination the Lessee must -

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

### 21.2 Clause 21.1 to survive termination

The Lessee's obligation under **clause 21.1** will survive termination.

## 22. Removal of property from Premises

### 22.1 Remove property prior to termination

Prior to Termination, unless otherwise mutually agreed between the parties, the Lessee must remove from the Premises all property of the Lessee which is not a fixture other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

### 22.2 Lessor can remove property on re-entry

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

## 23. Hire of Premises

### 23.1 Casual Hire or Regular Hire Only

The Lessee may Hire out the Premises or any part thereof on a Casual Hire or Regular Hire basis only PROVIDED -

- (a) such use is consistent at all times with the Permitted Purpose; and
- (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease.

### **23.2 Lessee remains responsible for Premises at all times**

The Lessee ACKNOWLEDGES that at all times, including when the Premises are hired to a third party, it remains responsible for the Premises, including without limitation any damage that may be caused or occurs during any hire period.

## **24. Assignment, sub-letting and charging**

### **24.1 No assignment or sub-letting without consent**

Subject to **clause 23**, the Lessee must not assign the leasehold estate in the Premises nor Sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law.

### **24.2 Lessor's Consent to Assignment and Sub-letting**

Provided all parties whose consent is required, under this Lease or at law, to an assignment or Sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or Sub-letting of the leasehold estate created by this Lease if -

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

### **24.3 Where sublessee is a community group**

If the proposed sublessee is a community group, whether or not a body corporate or unincorporated, the Lessor may not require a deed of sublease under **clause 24.2(c)**.

### **24.4 Consents of Assignee Supplementary**

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

### **24.5 Property Law Act 1969**

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

## 24.6 Costs for assignment and sub-letting

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

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

## 24.7 No mortgage or charge

The Lessee must not mortgage nor charge the Premises.

## 25. Acts by agents

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

## 26. Governing law

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

## 27. Statutory powers

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

## 28. Notice

### 28.1 Form of delivery

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

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

### 28.2 Service of notice

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

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 28.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and

- (c) if by post to an address specified in **clause 28.1(b)**, on the second business day following the date of posting of the Notice.

### **28.3 Signing of notice**

A Notice to a Party may be signed -

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

## **29. Severance**

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

## **30. Disputes**

### **30.1 Appointment of arbitrator**

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

### **30.2 Payment of amounts payable to date of award**

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

## **31. Variation**

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

## **32. Moratorium**

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

### 33. Further assurance

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

### 34. Payment of money

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

### 35. Waiver

#### 35.1 No general waiver

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

#### 35.2 Partial exercise of right power or privilege

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

### 36. Goods and services tax

#### 36.1 Definitions

The following definitions apply for the purpose of this clause -

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

#### 36.2 Lessee to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to at **clause 36.2(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.



### **36.3 Consideration in Kind**

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 36.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

(1) **No Contribution from Lessor**

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

(2) **Statement of GST paid is Conclusive**

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

(3) **Tax Invoices**

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

(4) **Reciprocity**

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

## **37. *Commercial Tenancy Act***

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

## **38. Caveat & Registration of lease**

### **38.1 Registration of Lease**

The Lessor must at the Lessee's cost, do all things necessary to assist the Lessee to register this lease at Landgate.

### **38.2 No absolute caveat**

The Lessee nor any person on behalf of the Lessee will, without the prior written consent of the Lessor, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

### **38.3 CEO & Lessor as attorney**

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

- (a) for the Term of this Lease;

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

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

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (f) where a registrable Surrender of Lease instrument is not executed by the Lessee and lodged at Landgate within 20 Business Days after the expiration or other determination of this Lease,

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

## 39. Indemnity and ratification

### 39.1 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under **clause 38**.

### 39.2 Indemnity

The Lessee indemnifies the Lessor against -

- (a) any loss arising directly from any act done under **clause 38** and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under **clause 38**.

## 40. Prior notice of proposal to change rules

The Lessee agrees that it will not materially change its rules of association under the Associations Incorporations Act 1987 without notifying the Lessor of its intention to make such a change prior to consideration of the required special resolution.

## 41. Provision of information

The Lessee agrees to provide to the Lessor -

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders during the Term; and
- (c) subject to any contrary obligation upon the Lessee pursuant to any other written law, any information on the Lessee's membership and other information on the Lessee reasonably required by the Lessor. The parties agree that nothing in this subclause will require the Lessee to release personal details of its members, or similar such information, to the Lessor.

## 42. Alcohol

### 42.1 Consumption of alcohol

The Lessee and Lessor COVENANT AND AGREE:

- (a) subject to **clause (b)**, that the Lessee shall not apply for an amendment to a licence or permit it has been granted pursuant to the Liquor Control Act 1988 for the Premises, without first obtaining the written consent of the Lessor;
- (b) consent is not required pursuant to **clause (a)**, for the following amendments or variations to a licence or permit:
  - (i) change of the licensee or manager; or
  - (ii) approval of Responsible Service of Alcohol providers.

### 42.2 Liquor licence

The Lessee COVENANTS AND AGREES that if a licence or permit is granted under the Liquor Control Act 1988 for the Premises it must -

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises **clause 11** shall apply;
- (b) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor, which will require, without limitation the following -
  - (i) the development and implementation of a House Management Policy and Code of Conduct (as defined by the Harm Minimisation Policy) for the Premises, and such policies must be displayed in a prominent position on the Premises at all times; and
  - (ii) the development and implementation of a Management Plan (as defined by the Harm Minimisation Policy) for the Premises.
- (c) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit, including without limitation a copy of the House Management Policy, Code of Conduct and Management Plan (as defined by the Harm Minimisation Policy)) to the Lessor as soon as practicable after the date of grant; and
- (d) indemnify and keep indemnified the Lessor from and against any breach of the Liquor Control Act 1988, Health (Food Hygiene) Regulations 1993, Liquor Control Regulations 1989 or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Premises.

## 43. Minimise nuisance to neighbours

- (1) The Lessee acknowledges that the Premises are located in close proximity to residential premises.
- (2) The Lessee must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises, particularly during and following social events held at the Premises.

- (3) The Lessee must comply with all reasonable conditions and directions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises.

#### 44. Lessor's consent

Where a consent or approval is required from the Lessor (as Lessor and not as Local Government) the Lessor shall use its best endeavour to give its decision within a reasonable period provided that no provision of this Lease may constitute a fetter on the Lessor exercising a power discretion or duty imposed on it by a written law.

#### 45. Re-development of Allen Park

- (1) The Lessee acknowledges that the Lessor is considering the re-development of the Reserve, known as Allen Park, where the Premises are located.
- (2) In the event of commencement of redevelopment or the grant of any Planning Approval or Building Licence for the redevelopment of the Reserve during the First Further Term or Second Further Term of the Lease, the Lessor and the Lessee covenant and agree:
  - (a) this Lease may be terminated by the Lessor upon six months written notice to the Lessee;
  - (b) if the Lease is terminated in accordance with this clause:
    - (i) the Lessee must peacefully surrender and yield up to the Lessor the Premises;
    - (ii) the Lessee must remove from the Premises all property of the Lessee which is not a fixture; and
    - (iii) the parties acknowledge and agree that **clauses 20, 21.1(a) and 22** will not apply;
  - (c) no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the redevelopment of the Reserve.
- (3) A certificate signed by the Lessor shall be full and sufficient evidence of the fact that the Lessor is redeveloping the Reserve.

#### 46. Additional terms, covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 7** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

# Schedule

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## Item 1 Land and Premises

### **Land**

Reserve 19349 – Lot 367 on Deposited Plan 217519 being the whole of the land comprised in Crown Land Title Volume LR3013 Folio 199

### **Premises**

That part of the Land hachured on the plan annexed hereto as **Annexure 1**, including all buildings, structures, alterations, additions and improvements on that part of the Land, or erected on that part of the Land during the Term.

## Item 2 Term

10 years commencing on 1 January 2011 and expiring on 31 December 2020.

## Item 3 Further Terms

### **First Further Term**

(a) 5 years commencing on 1 January 2021 and expiring on 31 December 2025.

### **Second Further Term**

(b) 5 years commencing on 1 January 2026 and expiring on 31 December 2030.

## Item 4 Commencement Date

1 January 2011

## Item 5 Rent

One peppercorn per annum payable on the Lessor's demand.

## Item 6 Permitted purpose

Sporting Club and uses reasonably ancillary thereto.

## Item 7 Additional terms and covenants

### **Obligation to grant a Licence of Changerooms to Swanbourne Cricket Club**

#### **1.1 Application of these provisions**

These provisions apply notwithstanding anything express or implied to the contrary in any other provision of this Lease. In this Item 7, a reference to a clause is a reference to a clause in this Item 7.

## 1.2 Grant of Licence of Changerooms

- (a) The Lessee covenant and agrees with the Lessor to grant the Swanbourne Cricket Club (SCC) the use of the portions of the Premises comprising the changerooms adjacent to the pavilion (including toilet and shower facilities) (**Changerooms**).
- (b) In relation to the use of the Changerooms by SCC, the Lessor and Lessee covenant and agree that the Lessee may impose upon the SCC reasonable terms and conditions in relation to the use of the Changerooms provided such terms and conditions are first approved by the Lessor in writing.
- (c) For the avoidance of doubt, the Lessee acknowledges and agrees that it must not charge the SCC a licence fee in excess of the Lessor's public hire rate for community buildings, as amended from time to time.
- (d) The Lessee acknowledges that at all times, including when the Premises are used by the SCC, it remains responsible for the Changerooms.

## Item 8 Maintenance fund

\$2,000 per year (to be reviewed on an annual basis in accordance with the terms of **clause 10.8**), this sum must be expended on the Premises in each year of the Term to the Lessor's satisfaction and in accordance with the provisions of **clause 10.8**.

## Item 9 Public liability insurance

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

# Signing page

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EXECUTED

2011

**THE COMMON SEAL** of the **City of Nedlands** was affixed by authority of a resolution of the Council in the presence of -

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Chief Executive Officer

**THE COMMON SEAL** of **Associates Rugby Union Football Club (Inc)** was hereunto affixed pursuant to the constitution of the Lessee in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office in the Lessee indicated under his or her name-

\_\_\_\_\_  
Office Holder Sign

\_\_\_\_\_  
Office Holder Sign

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Office Held:

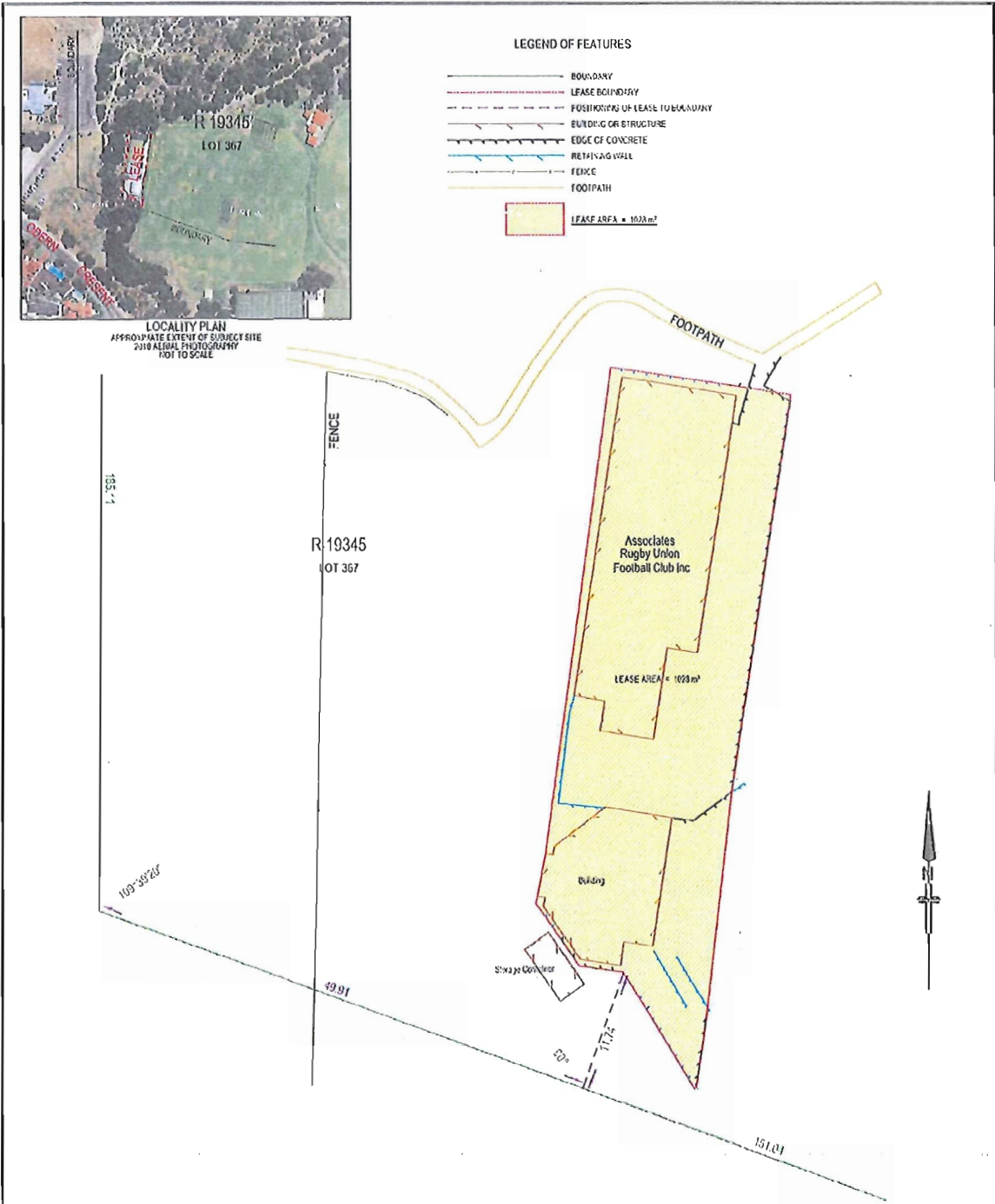
\_\_\_\_\_  
Office Held:

28438-10.12.08-TF-Deed

## Annexure 1 – Sketch of Premises

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SEE BROWN MCALLISTER SURVEYORS DRAWING 10193-1F FOR SITE SURVEY

**Brown McAllister Surveyors**  
 Licensed Surveyors | Land Development & Strata Consultants | Engineering Surveyors  
 Email: admin@brownmcallister.com.au Tel: (08) 9386 9688  
 43 Broadway, Nedlands, Western Australia, 6009 Fax: (08) 9386 9677

**SCALE**  
 1 : 500 @ A4 SIZE  
 All distances in metres unless stated otherwise

THE BOUNDARIES WERE NOT RE-ESTABLISHED AS PART OF THIS SURVEY THEREFORE THIS PLAN DOES NOT GUARANTEE THEIR ACCURACY  
 EXISTING BOUNDARY DIMENSIONS AND LOT AREAS TAKEN FROM LANDGATE RECORD

FIELD INSPECTION IS RECOMMENDED FOR LOCATION OF SERVICES PRIOR TO ANY EXCAVATION!  
 ALL AREAS AND DIMENSIONS ARE SUBJECT TO SURVEY AND EXAMINATION!

**SURVEY OF LEASE OF ALLEN PARK UPPER PAVILLION AND LOCATE LEASE TO BOUNDARY, CLEMENT STREET, SWANBOURNE**

<b>DATUM</b> HORIZONTAL - PCG 94 VERTICAL - A.H.D.	<b>SHEET</b> A4
<small>COPYRIGHT OF ALL THIS PLAN IS RESERVED BY BROWN MCALLISTER SURVEYORS AND REMAINS THE PROPERTY OF THE AFORESAID AND SHALL BE RETURNED UPON REQUEST. USE OF ALL OR PART OF THIS PLAN IS RESTRICTED WITHOUT PRIOR WRITTEN PERMISSION</small>	<b>SURVEYED</b> S. KEEMAN - 12/11/2010
	<b>FIELD NOTES</b> Digital Data
	<b>DRAWN</b> M. J. McDONALD - 25/11/2010
	<b>CHECKED</b>
	<b>REFERENCE</b> 10193-2L-rov1

**Client** CITY OF NEDLANDS

# Licence to use Allen Park Upper Pavilion Toilets & Changerooms Details

**Interpretation** – some defined terms are set out in the following Details and otherwise definitions are in clause 1.1

<b>Parties</b>	<b>Lessor, Licensor, Licensee</b>	
<b>Date of Licence</b>	See Signing page	
<b>Item</b>	<b>Defined Terms</b>	<b>Details</b>
1	Lessor	<b>City of Nedlands</b> 71 Stirling Highway Nedlands PERTH WA 6009
2	Licensor/Lessee	<b>Associates Rugby Union Football Club (Inc)</b> PO Box 10 Nedlands WA 6909
3	Licensee	<b>Swanbourne Cricket Club Incorporated</b> PO Box 6076 Swanbourne WA 6010
4	Lease	Lease of the Licensor's Premises dated on or about the date of this Licence between the Lessor as Lessor and the Licensor as Lessee.
5	Changerooms	The changerooms (including toilet and shower facilities) forming part of the Licensor's Premises and as shown outlined on the plan attached to this document.
6	Licensor's Premises	The premises known as Allen Park upper pavilion and the Changerooms situated at Swanbourne, Western Australia and being a portion of the Land.
7	Term	Commencing on the Commencement Date and expiring on:  (a) the day before the date of expiration of the Lease; or

## D74.11 – Attachment 1

Proposed Licence agreement for use of the change room & toilet facilities between the City, Associates Rugby Union Football Club (Inc) and Swanbourne Cricket Club (Inc)

## Licence to use Allen Park Upper Pavilion Toilets & Changerooms

Item	Defined Terms	Details
		(b) where the Lease is renewed then on the day before the date of expiration of the renewed term of the Lease; or  (c) if the Lease is terminated then on the date of termination of the Lease.
8	<b>Commencement Date</b>	The date of execution of this Licence.
9	<b>Licence Fee</b>	\$1.00 payable on the Commencement Date.
10	<b>Purpose</b>	Changerooms and toilet facilities in connection with the Licensee's cricket activities at Allen Park.
11	<b>Public liability insurance amount</b>	\$10,000,000.00
<b>Recitals</b>	<b>A</b>	The Licensor is the tenant of the Licensor's Premises pursuant to the Lease and this Licence is dependent on the continued existence of the Lease.
	<b>B</b>	The Licensor has agreed to grant to the Licensee a licence to use the Changerooms subject to and on the terms of this Licence.

# Licence to use Allen Park Upper Pavilion Toilets & Changerooms

## General terms

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### 1 Interpretation

#### 1.1 Definitions

In this Licence:

**Authorised Person** in relation to the Licensor or Licensee at any time means:

- (a) any person whose name and contact details are notified by the Licensor or Licensee to the other as being an Authorised Person of the notifying party; and
- (b) whether or not any person is notified under paragraph (a), then any member of the Licensor or Licensee having a position on the party's management or like committee or board at that time and including any person appointed as or at that time acting as the President, Secretary or Treasurer of that party or in the equivalent position under a different title.

**Authority** means any governmental or other public body or authority of any kind.

**Business Day** means a day on which banks are open for business in Perth other than a Saturday, Sunday or public holiday.

**Event of Default** is defined in clause 10.1.

**Land** means the Land on which the Licensor's Premises are situated being Reserve 19349 and being Lot 367 on Deposited Plan 217519 the whole of the land comprised in Crown Land Title Volume LR3013 Folio 199.

**Licensee's Employees, Agents, Contractors and Invitees** means each of the Licensee's employees, agents, contractors, service suppliers, sublessees, licensees, customers and other invitees, and any other person who at any time is in the Changerooms or on the Licensor's Premises with the Licensee's express or implied consent.

**Loss** means loss, damage, cost, liability or expense.

**Material Event of Default** means:

- (a) an Event of Default which results in the Licensor suffering or incurring Loss in an amount exceeding \$[5,000.00] which is not paid by the Licensee to the Licensor within 10 Business Days after written demand by the Licensor; or

- (b) the occurrence of 5 Events of Default within any 60 day period.

**Permitted Users** means the members of the Licensee and the Licensee's Employees, Agents, Contractors and Invitees.

**Suspension Notice** means a notice from the Licensor to the Licensee which:

- (a) specifies an Event of Default;
- (b) calls for the Licensee to rectify the default the subject of the Event of Default within 5 Business Days after the Licensee's receipt of the notice; and
- (c) states that the Licensee's rights of use of the Changerooms will be suspended unless the specified default is rectified within the 5 Business Day period.

## 1.2 Interpretation rules

In this Licence, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) the word "person" includes a firm, a body corporate, an unincorporated association or an Authority;
- (c) a reference to a "person" includes a reference to the person's executors, administrators, successors, and assigns; and
- (d) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally.

## 1.3 Use of "including" or "include"

Where in this Licence, the word 'including' or 'include' is used, it is to be taken to be followed immediately by the words 'but not limited to' or 'but are not limited to', as the case requires.

---

# 2 Grant of Licence

## 2.1 Use of Changerooms and other rights

The Licensor grants to the Licensee for the Term:

- (a) an exclusive licence to use the Changerooms for the Purpose at times when the Licensee has the use of the turf wicket on the upper oval at Allen Park by way of bona fide booking with the Lessor; and
- (b) the non-exclusive right for the Licensee in common with others to use those parts of the Licensor's Premises necessary for the purpose of access into and out of the Changerooms,

on and subject to the terms and conditions of this Licence.

## **2.2 Exercise of rights**

The rights of use granted under clause 2.1 may be exercised by the Licensee through and by the Permitted Users.

## **2.3 Payment of Licence Fee and amounts on account of Licensor's expenses**

The Licensee must pay to the Licensor:

- (a) the Licence Fee; and
- (b) amounts on account of the Licensor's Expenses as provided in the Schedule.

---

# **3 Insurances**

## **3.1 Licensee's obligations**

The Licensee is to:

- (a) maintain, with an insurer permitted to carry on an insurance business within the meaning of the Insurance Act 1973 (Cwlth.), in the names of the Licensee and noting the interests of the Lessor and the Licensor on the policy, a public liability insurance of at least the minimum cover set out in item 11 of the Details;
- (b) in respect of the insurance, if the Licensor requests a copy of valid certificate of currency, provide a copy to the Licensor; and
- (c) notify the Licensor as soon as reasonably practicable (after the Licensee becomes aware) when an event occurs which may give rise to a claim under or which could adversely affect the Licensee's insurance or the Licensor's property damage insurance, or if the Licensee's insurance is cancelled.

## **3.2 Variation of sum insured**

The Licensor may at any time after the fifth anniversary of the Commencement Date and once in any five year period, increase by a reasonable amount the minimum cover for the Public Risk Insurance by notice to the Licensee.

## **3.3 Restrictions on Licensee's activities**

Unless the Licensor consents, the Licensee is not to:

- (a) knowingly do or allow anything to be done which adversely affects any insurance taken out by the Licensor in connection with the Changerooms or which may increase the cost of obtaining that insurance; or
- (b) store or use inflammable, volatile or explosive substances in the Changerooms; or

- (c) settle or compromise any claim under any policy of insurance relating to the Licensor's interest in the Changerooms without the Licensor's prior written consent.

---

## **4 Licensee's obligations**

### **4.1 Use and repair of damage**

The Licensee must:

- (a) ensure that the Changerooms are only used within the terms of this Licence and in particular in accordance with the grant in clause 2.1(a);
- (b) repair at its own expense to the satisfaction of the Licensor any damage to the Changerooms to the extent caused by any of the Permitted Users.

It is acknowledged that the Licensee is not responsible for repair of any structural or other damage (including damage to floors, water leakage or storm damage) which is caused by or arises out of fair wear and tear or any latent structural defect or weather conditions.

### **4.2 Alterations**

The Licensee may not make any alteration or addition to the Changerooms.

### **4.3 Cleaning and security**

The Licensee must:

- (a) ensure that the Changerooms are kept securely locked when not in use by Permitted Users or the Licensor or persons authorised by the Licensor;
- (b) ensure that on each occasion after use of the Changerooms by Permitted Users and prior to lockup under paragraph (a) the Changerooms are in a clean and sanitary condition and that the area immediately surrounding the Changerooms are clean and tidy, unobstructed and free from dirt and rubbish;
- (c) comply with the Licensor's reasonable directions in connection with cleaning and refuse disposal; and
- (d) pay to the Licensor on demand any costs incurred by the Licensor in the changing of locks on doors of the Changerooms and provision of keys if the Licensor, acting reasonably, deems necessary by reason of the loss of any key by the Licensee.

### **4.4 No nuisance etc, not to breach Lease**

The Licensee must not do, and must ensure that the Permitted Users do not do, anything in the use of the Changerooms or in the exercise of rights under this Licence:

- (a) which constitutes a nuisance or annoyance to the Lessor or the Licensor or any person using the Licensed Premises with the express or implied consent of the Lessor or the Licensor;
- (b) without limiting paragraph (a), which is in breach of any law or regulation including the Criminal Code (WA); or
- (c) without limiting paragraphs (a) or (b), which constitutes or causes a breach of the Licensor's obligations under the Lease.

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## **5 Compliance with laws**

The Licensee must comply on time with all requirements and orders of any relevant Authority and all laws in connection with the use of the Changerooms and the exercise of the other rights granted to the Licensee under this Licence.

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## **6 No assignment, transfer or sub-licence**

### **6.1 No assignment, transfer or sub-licence**

The rights of use granted under this Licence are personal to the Licensee and the Licensee may not assign, transfer, sub-licence, mortgage, charge or otherwise deal with the benefit of this Licence or any rights of use of the Changerooms.

### **6.2 Exclusion of statutory provisions**

Sections 80 and 82 of Property Law Act 1969 of Western Australia do not apply to this Licence.

### **6.3 Dealing by Licensor**

As between the Licensor and Licensee, nothing in this Licence prevents the Licensor dealing with its interests in the Lease as it sees fit provided that such dealing does not compromise the entitlement of the Licensee to use the Licensor's Premises in accordance with the terms of this licence.

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## **7 Licensor's and Lessor's obligations and rights**

### **7.1 Licensor's obligations**

- (a) If the Licensee complies with its obligations under this Licence, the Licensor will allow the Licensee to enjoy the rights granted under this Licence without interruption by the Licensor.
- (b) The Licensor must provide the Licensee with one key for the Changerooms allocated to the Licensee at the Licensor's cost. The Licensee may request no more than two additional keys, which will be provided by the Licensor at the cost of the Licensee.
- (c) The Licensor will have no obligation to the Licensee to repair any damage, whether to the Licensor's Premises or the Land or any other



property, caused by or arising out of the use of the Changerooms by any Permitted User;

- (d) Paragraph (c) does not apply to exclude any obligation the Licensor has to the Lessor under the Lease.

## **7.2 Licensor's right to enter**

The Licensor and persons authorised by the Licensor may at any time enter the Changerooms to:

- (a) inspect, maintain or repair the Changerooms;
- (b) inspect, repair, maintain or alter any services running through the Changerooms and servicing the Changerooms, the Licensor's Premises or anything in or on the Land;
- (c) carry out structural alterations or other works to the Changerooms as the Licensor sees fit; or
- (d) remove harmful substances,

without affecting the Licensee's obligations under this Licence.

## **7.3 Lessor's rights**

The Licensee acknowledges and agrees that:

- (a) the Lessor has various rights under the Lease, including rights of entry for various purposes onto the Licensor's Premises (including the Changerooms);
- (b) the Lessor's rights under the Lease, including rights of termination of the Lease and rights of entry with respect to the Changerooms, apply notwithstanding the grant of this Licence and nothing in this Licence reduces, prejudices or otherwise affects the Lessor's rights under the Lease.

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# **8 Use of Changerooms is at Licensee's risk, Licensor's responsibility excluded**

## **8.1 Use of Changerooms is at Licensee's risk**

The use of the Changerooms and exercise of rights granted under this Licence is entirely at the Licensee's and the Permitted Users' own risk, and any property left in the Changerooms by the Licensee or any Permitted User is at their risk at all times.

## **8.2 Licensor's responsibility excluded**

Without limiting clause 8.1, the Licensor is not in any way responsible or liable to the Licensee or any Permitted User for:

- (a) any injury or Loss caused or contributed to by the presence of any person in or around the Changerooms, on the Licensor's Premises or on the Land;
- (b) any Loss resulting from the theft of or damage to any property or equipment while it is in the Changerooms, on the Licensor's Premises or on the Land, including without limitation if the theft or damage occurs as a result of or arises out of the Licensee's failure to securely lock the Changerooms; or
- (c) any injury to or the death of any Permitted User sustained or arising out of use of the Changerooms, including in the course of accessing the Changerooms across or through the Licensor's Premises or the Land;
- (d) any Loss suffered or incurred by the Licensee or any Permitted User caused by or arising out of any of the matters referred to in paragraphs (a), (b) or (c).

## **8.3 Licensor has no responsibility to check users of Changerooms**

Without limiting clause 8.2 and notwithstanding any other provision of this Licence, the Licensor has no responsibility or obligation of any kind to ensure that the Changerooms are not in fact used by persons other than Permitted Users, and the Licensor is under no duty to check the identity, authority or good faith of any person removing anything from the Changerooms.

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## **9 Indemnity**

The Licensee will indemnify the Licensor against all Loss suffered or incurred by the Licensor arising from or in connection with:

- (a) any damage to the Changerooms, the Licensor's Premises or the Land; or
- (b) any injury to or the death of any person in or about the Changerooms or the Licensor's Premises or on or about the Land; or
- (c) any theft of or damage to any property in or about the Changerooms or the Licensor's Premises or on or about the Land,

caused or contributed to by:

- (d) the Licensee or any Permitted User while using the Changerooms or while gaining access into or out of the Changerooms, and whether or not as a result of negligence by any of them; or
- (e) any default by the Licensee under this Licence,

or otherwise arising out of or in the course of the exercise by the Licensee or any Permitted User of rights granted under this Licence.

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## **10 Default by Licensee**

### **10.1 Event of Default**

An Event of Default occurs if the Licensee does not comply with any of its obligations under this Licence.

### **10.2 Licensor's right to suspend Licensee's use of Changerooms where Event of Default occurs**

- (a) If an Event of Default occurs the Licensor may:
  - (i) issue a Suspension Notice;
  - (ii) immediately suspend the Licensee's rights of use of the Changerooms if the Licensee does not rectify the default specified in the Suspension Notice within 5 Business Days after the Licensee's receipt of the Suspension Notice.
- (b) Suspension may be effected by the Licensor by:
  - (i) giving written notice to that effect to the Licensee or oral notice to an Authorised Officer of the Licensee; or
  - (ii) attaching a written notice to that effect to any external door of the Changerooms; or
  - (iii) changing the locks or security codes on any external doors to the Changerooms or otherwise locking the doors or preventing access to the Changerooms by the Permitted Users.
- (c) If the Licensor suspends the Licensee's rights of use of the Changerooms under this clause none of the Licensee or the Permitted Users will be entitled to use the Changerooms until:
  - (i) the default the subject of the Event of Default is rectified by the Licensee; or
  - (ii) the Licensee pays the Licensor reasonable compensation for rectification of the default.

As between the Licensor and Licensee, nothing in this paragraph obliges the Licensor to rectify any default by the Licensee.

### **10.3 Licensor's right to terminate this Licence where a Material Event of Default occurs**

If a Material Event of Default occurs the Licensor may immediately terminate this Licence by giving written notice to that effect to the Licensee.

#### **10.4 Other rights of Licensor**

Any action taken by the Licensor under clauses 10.2 and 10.3 is without prejudice to any other rights of the Licensor and does not release the Licensee from liability under this Licence.

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### **11 Removal of property**

#### **11.1 Removal of property from Changerooms and make good on expiry or termination of Licence**

On expiry or termination of this Licence the Licensee must:

- (a) remove all property of the Licensee and any Permitted User from the Changerooms;
- (b) repair any damage caused to the Changerooms by any of the Permitted Users and ensure the Changerooms are in a clean and sanitary condition, in each case to the reasonable satisfaction of the Licensor; and
- (c) comply with the reasonable directions of the Licensor in relation to the matters in paragraphs (a) and (b).

#### **11.2 Licensor may remove and store abandoned property on termination**

If the Licensee does not remove all property of the Licensee and any Permitted User from the Changerooms on or prior to expiry or termination of this Licence, the Licensor may, at the Licensee's cost, remove and store any property left in or about the Changerooms by the Licensee or any Permitted User.

#### **11.3 Indemnity by Licensee**

The Licensee will indemnify the Licensor against all loss, liability, cost or expense incurred or suffered by the Licensor resulting from damage to the property referred to in clause 11.3 arising from its removal and storage.

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### **12 Costs, expenses and duties**

#### **12.1 Costs of this Licence**

The parties are to bear their own costs of the negotiation, preparation and execution of this Licence.

#### **12.2 Other Costs and expenses**

The Licensee is to pay or reimburse the Licensor on demand for all costs and expenses properly incurred by the Licensor in relation to:

- (a) the exercise or enforcement by the Licensor of any right under this Licence; and
- (b) any act or omission by the Licensee causing Loss to the Licensor.

including, in each case, all legal costs and expenses properly incurred by the Licensor on a full indemnity basis.

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## **13 Notices**

### **13.1 Form and place for service**

A notice or other communication in connection with this Licence is to be in writing and:

- (a) may be given by the solicitors or agents of the relevant party; and
- (b) may be left at the address of the addressee or sent by ordinary post to the address of the addressee set out in item 1 of the Details or at or to any other address or addressee notified by one party to the other.

In the case of the Licensor notices are to be marked to the attention of “the President” or any other person nominated by the Licensor for the purposes of this Licence.

### **13.2 Time of notice**

Unless a later time is specified in it, a notice or other communication takes effect from the time it is received.

### **13.3 Receipt**

A letter is taken to be received:

- (a) if left at the address of the addressee, at the time it is left;
- (b) in the case of a posted letter, on the third Business Day after posting.

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## **14 Miscellaneous**

### **14.1 Waiver and variation**

A provision of or a right created under this Licence may not be waived except in writing signed by the party to be bound, or varied except in writing signed by the Licensor and the Licensee.

### **14.2 Remedies cumulative**

The rights, powers and remedies provided in this Licence are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Licence.

### **14.3 Indemnities**

In relation to each of the indemnities in this Licence:

- (a) the indemnity is a continuing obligation, separate and independent from the other obligations of the Licensee and survives the expiration or earlier termination of this Licence;

- (b) it is not necessary for the Licensor to incur expense or make payment before enforcing a right of indemnity; and
- (c) the Licensee must pay to the Licensor an amount equal to any loss, liability, costs or expenses suffered or incurred by any employee, officer or agent of the Licensor.

#### **14.4 Accrued rights**

The expiration or earlier termination of this Licence does not affect the rights of the Licensor in relation to a breach of this Licence by the Licensee before the expiration or termination.

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## **15 GST**

### **15.1 Consideration is exclusive of GST**

The consideration for a Supply under this Licence (other than under this clause 15.1) is exclusive of any GST imposed on the Supply.

### **15.2 Recovery of GST**

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.

### **15.3 Adjustment of additional amount**

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.

### **15.4 Reimbursement**

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.

## **15.5 Definitions**

In this Licence, Adjustment Note, GST, GST Group, Input Tax Credit, GST Law, Member, Recipient, Representative Member, Supply and Tax Invoice have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

**EXECUTED** as a deed

# Licence to use Allen Park Upper Pavilion Toilets & Changerooms

## The Schedule Payment of Licensor's Expenses

### 1 Definitions

In this Schedule:

**Expense Period** means each yearly period commencing on 1 January and includes the period from the Commencement Date to 31 December 2011.

**Licensee's Proportion** means 10%.

**Licensor's Expenses** means the amounts payable by the Licensor as Outgoings under clause 5.2(1) of the Lease for an Expense Period, including all amounts payable by the Licensor with respect to the provision of the following services to the Licensor's Premises;

- (a) electricity;
- (b) water; and
- (c) gas,

as certified by the Licensor's accountant.

### 2 Licensee to pay Licensee's Proportion of the Licensor's Expenses

- (a) The Licensee must pay to the Licensor the Licensee's Proportion of the Licensor's Expenses.
- (b) The amounts payable by the Licensee under paragraph (a) are payable within 10 Business Days after the Licensee's receipt of an invoice from the Licensor specifying:
  - (i) the Licensor's Expenses for a relevant Expense Period; and
  - (ii) the amount payable by the Licensee shown as the Licensee's Proportion of the Licensor's Expenses for that Expense Period.
- (c) Notwithstanding anything to the contrary in this clause the Licensee will no later than 31 January 2012 pay the sum of \$250.00 to the Licensor and that payment will be in full satisfaction of the liability of the Licensee to make payment of the Licensee's Proportion of the Licensor's Expenses for the Expense Period from the Commencement Date until 31 December 2011 under this clause.



# Licence to use Allen Park Upper Pavilion Toilets & Changerooms

## Signing page

DATED: 2011

THE COMMON SEAL of the City of Nedlands was affixed by authority of a resolution of the Council in the presence of -

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Chief Executive Officer

THE COMMON SEAL of Associates )  
Rugby Union Football Club (Inc) was )  
hereunto affixed pursuant to its )  
constitution in the presence of each of )  
the undersigned each of whom hereby )  
declares by the execution of this )  
document that he or she holds the office )  
in the Licensor indicated under his or )  
her name-

.....  
Office Holder Sign

.....  
Officer Holder Sign

.....  
Name:

.....  
Name:

.....  
Address:

.....  
Address:

.....  
Office Held:

.....  
Office Held:

Executed by SWANBOURNE )  
CRICKET CLUB INCORPORATED )  
in the presence of each of the )  
undersigned each of whom hereby )  
declares by the execution of this )  
document that he or she holds the )  
office in the Licensee indicated under  
his or her name:

.....  
President

.....  
Secretary

.....  
Name:

.....  
Name:

.....  
Address:

.....  
Address:

**ANNEXURE “1”**

**Changerooms**

**See attached Plan**

**CLEAN COPY FINAL DRAFT 6 NOVEMBER 2011**

## **Licence to use Allen Park Upper Pavilion Toilets & Changerooms**

### **Licence to use Allen Park Upper Pavilion Toilets & Changerooms**

Dated

2011

**City of Nedlands (Lessor)**

**Associates Rugby Union Football Club (Inc) (Licensor)**

**Swanbourne Cricket Club Incorporated (Licensee)**

# Licence to use Allen Park Upper Pavilion Toilets & Changerooms

## Contents

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>3</b>
<b>1 Interpretation</b>	<b>3</b>
1.1 Definitions	3
1.2 Interpretation rules	4
1.3 Use of "including" or "include"	4
<b>2 Grant of Licence</b>	<b>4</b>
2.1 Use of Changerooms and other rights	4
2.2 Exercise of rights	5
2.3 Payment of Licence Fee and amounts on account of Licensor's expenses	5
<b>3 Insurances</b>	<b>5</b>
3.1 Licensee's obligations	5
3.2 Variation of sum insured	5
3.3 Restrictions on Licensee's activities	5
<b>4 Licensee's obligations</b>	<b>6</b>
4.1 Use and repair of damage	6
4.2 Alterations	6
4.3 Cleaning and security	6
4.4 No nuisance etc, not to breach Lease	6
<b>5 Compliance with laws</b>	<b>7</b>
<b>6 No assignment, transfer or sub-licence</b>	<b>7</b>
6.1 No assignment, transfer or sub-licence	7
6.2 Exclusion of statutory provisions	7
6.3 Dealing by Licensor	7
<b>7 Licensor's and Lessor's obligations and rights</b>	<b>7</b>
7.1 Licensor's obligations	7
7.2 Licensor's right to enter	8
7.3 Lessor's rights	8
<b>8 Use of Changerooms is at Licensee's risk, Licensor's responsibility excluded</b>	<b>8</b>
8.1 Use of Changerooms is at Licensee's risk	8
8.2 Licensor's responsibility excluded	9
8.3 Licensor has no responsibility to check users of Changerooms	9

<b>9</b>	<b>Indemnity</b>	<b>9</b>
<b>10</b>	<b>Default by Licensee</b>	<b>10</b>
10.1	Event of Default	10
10.2	Licensor's right to suspend Licensee's use of Changerooms where Event of Default occurs	10
10.3	Licensor's right to terminate this Licence where a Material Event of Default occurs	10
10.4	Other rights of Licensor	11
<b>11</b>	<b>Removal of property</b>	<b>11</b>
11.1	Removal of property from Changerooms and make good on expiry or termination of Licence	11
11.2	Licensor may remove and store abandoned property on termination	11
11.3	Indemnity by Licensee	11
<b>12</b>	<b>Costs, expenses and duties</b>	<b>11</b>
12.1	Costs of this Licence	11
12.2	Other Costs and expenses	11
<b>13</b>	<b>Notices</b>	<b>12</b>
13.1	Form and place for service	12
13.2	Time of notice	12
13.3	Receipt	12
<b>14</b>	<b>Miscellaneous</b>	<b>12</b>
14.1	Waiver and variation	12
14.2	Remedies cumulative	12
14.3	Indemnities	12
14.4	Accrued rights	13
<b>15</b>	<b>GST</b>	<b>13</b>
15.1	Consideration is exclusive of GST	13
15.2	Recovery of GST	13
15.3	Adjustment of additional amount	13
15.4	Reimbursement	13
15.5	Definitions	14
<b>The Schedule</b>	<b>Payment of Licensor's Expenses</b>	<b>15</b>
	<b>Signing page</b>	<b>16</b>