



City of  
**Melville**

**DEED OF LEASE**

**CITY OF MELVILLE**

**(Lessor)**

**AND**

**MELVILLE BOWLING CLUB INC.**

**(Lessee)**

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**PORTION OF LOT 39  
592 CANNING HIGHWAY, ALFRED COVE**

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SUBJECT TO LEGAL REVIEW

## Index

1	INTERPRETATION.....	1
	1.1 Definitions .....	1
	1.2 Definitions: GST .....	2
	1.3 Construction .....	2
	1.4 Headings .....	3
	1.5 Exercise of Discretion .....	3
	1.6 Withholding of Consent or Approval.....	3
2	CONDITIONS.....	3
	2.1 Conditions .....	3
	2.2 Application for Approvals and Consents .....	4
	2.3 Failure of Condition .....	4
	2.4 Approval or Consent Subject to Conditions .....	4
3	LEASE TERM .....	4
	3.1 Initial Term .....	4
	3.2 Option of Renewal.....	4
4	RENT .....	4
	4.1 Obligation to pay .....	4
	4.2 Initial Rent .....	4
	4.3 Adjustments of Rent.....	5
	4.4 Rent not to decrease.....	5
	4.5 Method of payment .....	5
5	LESSEE'S AGREEMENTS WITH LESSOR .....	5
	5.1 Outgoings.....	5
	5.2 Assignment, Subletting, Parting with Possession .....	5
	5.3 Comply with all laws .....	6
	5.4 Alterations .....	6
	5.5 Maintenance and Repair .....	6
	5.6 Use .....	6
	5.7 Signs .....	7
	5.8 Report Acts of Vandalism.....	7
	5.9 Insurance .....	7
	5.10 Lessor's Rights of Entry .....	8
	5.11 Costs .....	8
	5.12 Indemnity.....	8
	5.13 Restore Premises.....	9
	5.14 Obligation to report injuries, loss or damage.....	9
	5.15 Deliver up Premises .....	10
	5.16 Behaviour .....	10
6	LESSOR'S AGREEMENTS WITH LESSEE .....	10
	6.1 Quiet Enjoyment.....	10
	6.2 Repairs and Maintenance .....	10
7	DEFAULT .....	10
	7.1 Default: Essential Terms .....	10
	7.2 Default.....	10

7.3	Execution of Works by Lessor.....	11
7.4	Interest on Overdue Money.....	11
7.5	Acceptance of Rent Not to Prejudice Lessor's Right.....	11
8	DAMAGE OR DESTRUCTION .....	12
8.1	Damage or Destruction .....	12
8.2	Total Damage or Destruction .....	12
9	GST.....	12
10	LIMITATION OF LIABILITY OF LESSOR.....	13
11	SPECIAL CONDITIONS .....	13
12	DISPUTE RESOLUTION .....	13
12.1	Notice of Dispute .....	13
12.2	Conference.....	13
12.3	Expert mediation .....	13
12.4	Exchange of information .....	14
12.5	Termination of dispute resolution .....	14
12.6	Agreement to arbitrate .....	14
12.7	Selection of arbitrator .....	14
12.8	Governing law .....	14
12.9	Place and language of arbitration .....	14
13	MISCELLANEOUS PROVISIONS .....	14
13.1	Notices .....	14
13.2	Holding Over .....	15
13.3	Waiver .....	15
13.4	Severance .....	15
13.5	Statutory Powers.....	15
13.6	Governing Law and Jurisdiction .....	15
13.7	Joint and Several Liability .....	15
13.8	Time of the Essence .....	15
14	<u>REDEVELOPMENT</u> .....	145
14.1	Lessee Acknowledgment .....	15

SUBJECT TO LEGAL REVIEW

## THIS AGREEMENT

**BETWEEN** CITY OF MELVILLE of 10 Almondbury Road, Booragoon, Western Australia ("Lessor")

**AND** MELVILLE BOWLING CLUB INC. of 592 Canning Highway, Alfred Cove, Western Australia (Lessee")

## RECITAL

Subject to certain approvals and consents being obtained, the Lessor has agreed to lease the Premises to the Lessee and the Lessee has agreed to take the Premises on lease from the Lessor upon and subject to the provisions of this document.

## IT IS AGREED

### 1 INTERPRETATION

#### 1.1 Definitions

In this document:

**"Adjustment Date"** means the first day of July immediately following the date of commencement of the Term and each succeeding 1 July during the Term.

**"Business Day"** means a day other than a Saturday, Sunday or bank or public holiday in Western Australia.

**"Consumer Price Index"** means the Consumer Price Index as published by the Australian Bureau of Statistics for Perth (All Groups) or any substitute therefore accepted by the Government of the Commonwealth of Australia from time to time as a measure of the increase in the cost of living provided that:

- (a) the reference figure for the index number shall be 1989-1990 appropriately adjusted from time to time if and when the Commonwealth Statistician updates the reference figure for the index number; and
- (b) if at any time either or both of such Consumer Price Index and the index number is discontinued or suspended or if in the opinion of either the Lessor or the Lessee the method of computation thereof is substantially altered there shall be substituted therefore such alternative method of computing changes in the cost of living as is mutually agreed in writing by the Lessor and the Lessee during the period of fourteen (14) days after notice in writing given by either of them to the other or failing such agreement as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants in Australia (Western Australian Division) at the request of the Lessor most closely reflects changes in the cost of living for the Perth metropolitan area, the costs of such expert to be borne by the Lessor and the Lessee in equal shares.

**"Date of Commencement"** means the date of commencement of the Term.

**"Lessee's Maintenance Obligations"** means the obligations of the Lessee set out in Appendix "A".

**"Lessor's Maintenance Obligations"** means the obligations of the Lessor which are set out in **Appendix "A"**.

**"Premises"** means the land described in item 1 of **schedule 1** together with all buildings and improvements on that land or after the signing of this Lease erected on that land including the Lessor's fixtures, fittings, plant and equipment and includes any part thereof.

**"Rent"** means the Rent specified in item 5 of **schedule 1** and any adjustment to or variation of that Rent in accordance with this Lease.

**"Reserve"** means where the Premises are a Reserve (as defined in the *Land Administration Act 1997*) or portion of such a Reserve which has been placed under the care, control and management of the Lessor pursuant to the *Land Administration Act 1997* that reserve.

**"Term"** means the term specified in item 4.1 of **schedule 1** and includes, if the Lessee exercises any option of renewal of this Lease granted to the Lessee pursuant to the provisions of **clause 3**, any further term.

**"This Lease"** or **"this document"** or **"this agreement"** means this document.

## 1.2 Definitions: GST

In this document the expressions "consideration", "GST", "input tax credit", "supply", "supplier", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

## 1.3 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Perth, Western Australia;
  - (vii) "\$" or "dollars" is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (x) this document includes all schedules and annexures to it; and
  - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
  - (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

#### 1.4 Headings

Headings do not affect the interpretation of this document.

#### 1.5 Exercise of Discretion

A power, authority, right or discretion conferred by this Lease may be exercised from time to time as the occasion requires.

#### 1.6 Withholding of Consent or Approval

Where the consent or approval of a party to this Lease is required, that consent or approval must not be unreasonably or capriciously withheld, but this clause has no application to **clause 4.2**.

## 2 CONDITIONS

### 2.1 Conditions

This document is subject to and conditional upon:

- (a) the approval of the Western Australian Planning Commission under section 136 of the *Planning and Development Act 2005*; and
- (b) any other necessary approvals and consents,

(if and to the extent that those approvals and consents are necessary and have not been obtained prior to the signing of this document) being obtained within three months after the signing of this document.

## 2.2 Application for Approvals and Consents

As soon as possible after the signing of this document the Lessor must, if the Lessor has not already done so, make application for the approvals and consents referred to in **clause 2.1** and must pursue those applications and the Lessee must promptly join in the applications as may be necessary.

## 2.3 Failure of Condition

If any approval or consent is refused or not obtained on or prior to the date specified in **clause 2.1** this document ceases to have effect and no party has any claim against any other party.

## 2.4 Approval or Consent Subject to Conditions

If any approval or consent is granted subject to any conditions with which either party is unable or reasonably unwilling to comply that party may give to the other a notice in writing that the condition is unacceptable and thereupon the approval or consent is deemed to have been refused and this document ceases to have effect and no party has any claim against any other party.

## 3 LEASE TERM

### 3.1 Initial Term

The Lessor leases the Premises to the Lessee and the Lessee takes the Premises on lease from the Lessor together with the rights specified in item 2 of **schedule 1** but subject to the reservations specified in item 3 of **schedule 1** for the Term upon and subject to the provisions of this Lease.

### 3.2 Option of Renewal

If at the date of exercise of the option in this **clause 3.2** contained the Lessee has not failed to comply with any notice given by the Lessor to the Lessee requiring the Lessee to remedy a breach by the Lessee of the provisions of this Lease on the Lessee's part to be complied with, the Lessee has the option of extending this Lease for the further term specified in item 4.2 of **schedule 1** exercisable by the written request of the Lessee made not more than six (6) months nor less than three (3) months prior to the expiration of the Term at the same Rent and upon the same provisions as are contained in this Lease except this **clause 3.2**.

## 4 RENT

### 4.1 Obligation to pay

The Lessee agrees with the Lessor that:

The Lessee must pay to the Lessor the Rent without any deduction or abatement whatsoever except as set out in clause 8; and the Rent must be calculated, adjusted and paid in accordance with the succeeding provisions of this clause 4.

### 4.2 Initial Rent

Subject to the succeeding provisions of this **clause 4**, the Rent is the amount specified in item 5 of **schedule 1**.

#### 4.3 Adjustments of Rent

Adjustments to the Rent will be reviewed and increased by CPI (Perth) All Groups, set by Council and adopted each year in the City of Melville's Annual Budget.

#### 4.4 Rent not to decrease

The Rent following an adjustment must not be less than the Rent payable prior to the Adjustment Date to the intent that if there is a decrease in the Consumer Price Index, the Rent shall remain the same as that payable prior to the Adjustment Date.

#### 4.5 Method of payment

Rent must be paid annually in advance pro rata to 30 June in the first year and annually in advance throughout the subsequent term. The first such payment is to be made on the date of commencement.

### 5 LESSEE'S AGREEMENTS WITH LESSOR

The Lessee agrees with the Lessor as follows:

#### 5.1 Outgoings

To pay when due all charges, rentals and expenses in respect of gas, electricity, water, telephone, telecommunications, rates and taxes, insurance premiums, used, consumed or incurred in respect of the Premises and if it is possible and reasonably practical to do so, to procure the issue of accounts in respect of such services to and in the name of the Lessee rather than to and in the name of the Lessor. In the event that the Premises are not separately rated, charged or assessed in respect of any of the rates, taxes, assessments, impositions and outgoings referred to in **clause 5.1**, then for the purposes of this paragraph they shall be apportioned between the Licensed Area and the other premises the subject of the assessment in proportion to their area. Likely outgoings and percentage of outgoings to be paid by the Lessee in accordance with Clause 5.1 are outlined in Schedule 1 – Item 7.1)

#### 5.2 Assignment, Subletting, Parting with Possession

- (a) Not to assign, mortgage, charge, sublet or part with the possession of the Premises without the prior written consent of the Lessor which consent the Lessor may in the Lessor's absolute discretion refuse without assigning any reason and it is agreed that Sections 80 and 82 of the *Property Law Act 1969* are excluded from and do not apply to this Lease. Not to assign, mortgage, charge, sub-let or part with the possession of the Premises without such prior approval in writing (if any) as is required pursuant to the *Land Administration Act 1997*.
- (b) This **clause 5.2** does not preclude the occasional hiring by the Lessee of the Premises if the Lessee complies with the following provisions:
  - (i) no hiring of the Premises shall be for any longer than 24 hours (or such other period as the Lessor determines from time to time in the Lessor's absolute and unlimited discretion);
  - (ii) all Fees may be kept by the Lessee;
  - (iii) the Lessee must give to the Lessor the Lessee's profit and loss accounts, statements, balance sheets and attached reports and notes for each

financial year within 45 Business Days of the end of that year, such accounts and balance sheets to be audited if requested by the Lessor; and

- (v) no hiring of the Premises in any way alters or affects the Lessee's obligations to the Lessor which shall continue in full force and effect.

### 5.3 Comply with all laws

To comply with and obey the provisions of all laws which may from time to time be made or given with respect to or affecting the Premises.

### 5.4 Alterations

Not without the prior written consent of the Lessor to:

- (a) erect or permit to be erected any building or structure on the Premises or to make or permit to be made any alteration in or to any building or structure erected on the Premises other than maintenance or refurbishment

and the Lessee further agrees that if any buildings and improvements are to be constructed, erected or made or works carried out or executed on the Premises or any such installation is to be made by the Lessee, it is agreed that they must be constructed, erected, made, carried out and executed under the supervision and to the satisfaction of the Lessor and not otherwise.

### 5.5 Maintenance and Repair

To:

- (a) keep and maintain the Premises in good and tenantable repair and condition, fair wear and tear excepted; and
- (b) without limiting the generality of paragraph (a), promptly and in a proper and workmanlike manner
  - (i) carry out and comply with the Lessee's Maintenance Obligations; and
  - (ii) carry out all repairs and maintenance rendered necessary by the negligence, act, default or omission of the Lessee or any officer, member, employee, agent, contractor or invitee of the Lessee or by the use of occupancy by any such person of the Premises.

### 5.6 Use

Not to:

- (a) use or to permit to be used the Premises for any purpose whatsoever other than for the purposes and objects for which the Reserve is vested in and is held by the Lessor;
- (b) use or permit to be used the Premises for any purpose other than that or those specified in item 6 of **schedule 1**;
- (c) carry on or suffer to be carried on upon the Premises any noxious noisome or offensive trade act business occupation or calling;

- (d) make, do or suffer upon the Premises any act, matter or thing that may be or become a nuisance or annoyance to the Lessor or to the owners or occupiers of property in the neighbourhood of the Premises
- (e) sell or dispense alcohol from the Premises or allow alcohol to be sold or dispensed from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988* and any policy of the City relevant to the sale and/or consumption of alcohol on Council property;
- (f) permit any person to smoke in any building constructed on the Premises;
- (g) cut down any trees, plants or shrubs or sell, remove or otherwise dispose of any clay, sand, gravel, timber or other materials from the Premises;
- (h) store motor fuels, fertilizers, chemicals, inflammable liquids, acetylene gas or volatile or explosive oils, compounds or substances upon the Premises that would breach the Explosives and *Dangerous Goods Act (Storage and Handling of Non-explosives) Regulations 2007*.
- (i) permit any person to sleep on the Premises except for security reasons or for a specific event.
- (j) use or permit or suffer to be used any lavatories, toilets, sinks and drainage and other plumbing facilities in the Premises for any purposes other than those for which they were constructed or provided or deposit or permit to be deposited therein any sweepings, rubbish or other matter and any damage thereto arising caused by misuse shall be made good by the Lessee forthwith and all damages occasioned thereby shall also be paid by the Lessee.

#### **5.7 Signs**

Not to affix or exhibit or permit to be affixed or exhibited to or upon the Premises any placard, poster, sign, board or other advertisement that is visible externally without the prior written consent of the Lessor and if such consent is given, to keep and maintain any such advertisement in good and tenantable repair and condition.

#### **5.8 Report Acts of Vandalism**

To immediately report to the Lessor any known acts of vandalism or any incident which is known to the Lessee and which occurs adjacent to the Premises which is or is likely to involve a breach of the peace or become the subject of a report to the police.

#### **5.9 Insurance**

To take out and keep in force the following policies of insurance with an insurer approved by the Lessor:

- (a) a public liability insurance policy naming the Lessee as the insured for an amount which at the commencement of the Term must not be less than the sum of TWENTY MILLION DOLLARS (\$20,000,000.00) and which must be adjusted at the expiration of the first and each succeeding year during the Term to an amount which on the date of each adjustment the parties agree represents an amount of public risk insurance which a reasonable and prudent person in the circumstances of the Lessee would take out and in the event of any dispute concerning the amount it must be fixed at the expense of the Lessee by an insurance broker nominated by the Lessor;

- (b) a workers' compensation policy covering all employees of the Lessee; and
- (c) an insurance policy, in the event of damage or destruction by such risks against which a reasonable and prudent person in the circumstances of the Lessee would insure, insuring against either of;
  - (i) The Lessee's building, furniture and fittings (in their full insurable value on a replacement and/or reinstatement basis including extra costs reinstatement) or
  - (ii) The cost of reinstatement of the site (land) to a clean and tidy site
- (d) Building insurance, against loss or damage by the usual insurable risks including fire, fusion, explosion, storm, tempest, civil

and to deposit each such policy of insurance with the Lessor and at least seven (7) days before they become due to pay all premiums necessary for that purpose and deposit with the Lessor the receipt for the current year's premium or a certificate of renewal of the insurance company and if the Lessee at any time fails to insure and keep insured as above it is agreed the Lessor may do all things necessary to effect or maintain the insurance and that the Lessee must repay any moneys expended by the Lessor for that purpose on demand and any moneys so expended are deemed to be Rent in arrears and may be recovered by the Lessor accordingly.

#### **5.10 Lessor's Rights of Entry**

To permit:

- (c) the Lessor, any employee of the Lessor and any other person authorised by the Lessor having given reasonable prior notice to the Lessee to enter upon the Premises and view the condition of the Premises and upon notice being given by the Lessor, to repair the Premises in accordance with such requirements as are set out in any such notice; and
- (d) the Lessor in the event of a State or Local emergency situation may occupy and manage the Land and Buildings for the purpose of reducing or preventing harm or for the purposes of emergency management or for the provision of emergency accommodation to displaced residents (if suitable), for the period of the emergency.

#### **5.11 Costs**

To pay:

- (e) all costs of and incidental to the preparation, execution and stamping of this Lease; and
- (f) all costs, charges and expenses (including solicitors' costs and architects' fees) incurred by the Lessor for the purposes of or incidental to the preparation and service of a notice under Section 81 of the *Property Law Act 1969*, requiring the Lessee to remedy a breach of any provision of this Lease notwithstanding forfeiture for the breach is avoided otherwise than by relief granted by the Court.

#### **5.12 Indemnity**

- (g) To the extent that the terms and conditions of any insurance effected by the Lessor or any money paid to the Lessor out of insurance effected by the Lessee do not fully indemnify the Lessor against all actions, claims, demands,

notices, losses, damages, costs and expenses to which the Lessor becomes liable in respect of any of the matters referred to in sub-paragraphs (i), (ii) and (iii) of this **clause 5.12(a)**, to indemnify and keep indemnified the Lessor against all actions, claims, demands, notices, losses, damages, costs and expenses for which the Lessor becomes liable in respect of any loss or damage to property or death or injury of whatever nature or kind and however and wherever sustained:

- (i) caused or contributed to by the use or occupation of the Premises except to the extent that the same is caused or contributed to by the negligence, act, default or omission of the Lessor;
  - (ii) resulting from any negligence, act, default or omission of the Lessee or any officer, member, employee, agent, contractor or invitee of the Lessee; or
  - (iii) resulting from any notice, claim or demand to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease except to the extent that the Lessor is obliged under the provisions of this Lease to pay for or contribute to that cost.
- (h) Without limiting the generality of **clause 5.12(a)**, to indemnify and keep indemnified the Lessor against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor becomes liable in respect of or arising from the overflow or leakage of water or other fluids in or from the Premises except to the extent that the same is caused or contributed to by the negligence, act, default or omission of the Lessor.
- (i) Without limiting the generality of **clauses 5.12(a)** and **5.12(b)**, to indemnify and keep indemnified the Lessor against any claim, action, demand, fine, damage, costs or expenses arising out of any breach by the Lessee or any officer, member, employee, agent, contractor or invitee of the Lessee of any provision of the *Occupational Health, Safety and Welfare Act 1984*.

### **5.13 Restore Premises**

**Subject to Clause 5.15**, Upon the expiration or sooner determination of the Term to remove all fixtures and fittings of the Lessee from the Premises and to make good any damage caused by such removal and in particular but without limiting the generality of the above to remove or paint over, as the case may require, any sign, placard or advertisement affixed or exhibited in to or upon the Premises by the Lessee.

### **5.14 Obligation to report injuries, loss or damage**

Subject to the Privacy Principles in the Freedom of Information Act 1992 (WA) and any legal restrictions that may apply and in the event of injury, loss or damage to any person or property on the Premises, to notify in writing the Lessor of the injury, loss or damage within 48 hours of the event or such additional time that may be necessary to clarify the Lessee's legal right to release personal information, giving full details of the event and names and contact details of any people involved in the event, including witnesses.

The Lessor may request further particulars from the Lessee, in which case the Lessee must respond promptly and do all things reasonably necessary to satisfy the request of the Lessor.

### 5.15 Deliver up Premises

Upon the expiration or sooner determination of the Term to deliver up the Premises and all additions to the Premises and fixtures and fittings in the Premises and the keys of the Premises (if any) to the Lessor in good and tenantable repair order and condition in strict accordance with the Lessee's obligations under this document.

If the building is not required by the Lessor the Lessee will incur the cost to have the building and any other structures built by the Lessee removed or demolished leaving a cleared tidy site.

### 5.16 Behaviour

To ensure the decent behaviour in or around the Premises of all members, patrons, visitors and employees of the Lessee and to take all necessary action to prevent disorderly behaviour and the use of indecent language by such persons and to prevent any disturbance or nuisance or annoyance arising from their use of or presence in the Premises.

## 6 LESSOR'S AGREEMENTS WITH LESSEE

The Lessor agrees with the Lessee as follows:

### 6.1 Quiet Enjoyment

If the Lessee pays the Rent and observes and performs the provisions of this Lease on the part of the Lessee to be observed and performed, the Lessee is, subject to **clause 5.10**, entitled to peaceably hold and enjoy the Premises during the Term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

### 6.2 Repairs and Maintenance

The Lessor must promptly and in a proper and workmanlike manner carry out and comply with the Lessor's Maintenance Obligations.

## 7 DEFAULT

The Lessor and the Lessee agree as follows:

### 7.1 Default: Essential Terms

Each of the obligations of the Lessee set out in **clause 4** (payment of Rent), **clause 5.2** (assignment, sub-letting and parting with possession), **clause 5.5** (maintenance and repair), **clause 5.6** (use of the Premises), **clause 5.9** (the Lessee's insurances), **clause 5.14** (obligation to report injuries, loss or damage) and **clause 5.12** (indemnity) of this document is an essential term of this document.

### 7.2 Default

If:

- (a) any Rent or any other moneys payable under this document remain unpaid for ten Business Days after written demand has been received by the Lessee from the Lessor; or
- (b) an order is made or a resolution is effectively passed for the winding up of the Lessee (other than for the purpose of amalgamation or reconstruction) or the Lessee becomes bankrupt or if any deed of assignment or deed of arrangement is prepared by or for or presented to the Lessee for execution by

it or there is appointed under any Act or instrument or by order of any Court a manager or an administrator or a trustee or a receiver or a receiver and manager or liquidator in relation to any part of the Lessee's undertakings or assets or property; or

- (c) the Lessee fails within the time specified in a notice (which time shall be not less than 10 Business Days) requiring the Lessee to remedy a breach by the Lessee of any one or more of the provisions of this Lease unless the non-performance or non-observance has been waived or excused by the Lessor in writing; or
- (d) the Premises are deserted or vacated,

then and in each case the Lessor or any person or persons duly authorised by the Lessor at any time thereafter and without any notice or demand may re-enter into and upon the Premises and repossess the Premises and thereby the Term and the estate and interest of the Lessee in the Premises will immediately determine.

The Lessor's right of action referred to above is without prejudice to the right of action or other remedy which the Lessor has in respect of any prior breach by the Lessee of any provision of this Lease and following such forfeiture the Lessor is entitled to recover from the Lessee damages for loss of the benefits which performance of the provisions of this Lease by the Lessee would have conferred on the Lessor between the date of forfeiture and the expiry of this Lease by the passing of time.

### **7.3 Execution of Works by Lessor**

If and whenever the Lessee fails within the time specified in a notice issued pursuant to **clause 7.2(c)** to remedy a breach of a provision of this Lease, the Lessor may (without prejudice to any other rights or remedies of the Lessor) enter upon the Premises, carry out or execute any repairs, requisitions, notices or works, remedy any default, pay or discharge any outgoings or other moneys or do any act, matter or thing the Lessor thinks necessary or desirable to ensure or secure compliance with the provisions of this Lease and the Lessee must repay any moneys expended by the Lessor for that purpose on demand and any moneys so expended are deemed to be Rent in arrears and may be recovered by the Lessor accordingly.

### **7.4 Interest on Overdue Money**

Without affecting the rights, powers and remedies of the Lessor under this Lease, the Lessee agrees to pay to the Lessor on demand interest on any money due by the Lessee to the Lessor pursuant to this Lease but unpaid for ten Business Days calculated from the due date for payment until payment in full and computed at the rate per cent per annum which is adopted by the current City of Melville budget from time to time and such interest is deemed to be Rent in arrears and may be recovered by the Lessor accordingly.

### **7.5 Acceptance of Rent Not to Prejudice Lessor's Right**

Demand for or acceptance of Rent or any other amounts payable by the Lessee in terms of this Lease after default by the Lessee under this Lease (other than on the grounds of non-payment of that Rent or the other amounts as the case may be) will not affect the exercise by the Lessor of the rights and powers conferred upon the Lessor by this Lease and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

## 8 DAMAGE OR DESTRUCTION

### 8.1 Damage or Destruction

- (a) Subject to the provisions of **clause 8.2** if the Premises are at any time during the Term totally or partially destroyed or damaged so as to render the Premises unfit for the occupation and use of the Lessee or inaccessible, the Rent and any other moneys payable by the Lessee under the terms of this Lease ("**Amounts Payable**") or a proportionate part of the Amounts Payable according to the nature and extent of the damage sustained shall abate and all or any remedies for recovery of the Amounts Payable falling due after the destruction or damage or a proportionate part of the Amounts Payable shall be suspended until the Premises have been rebuilt or made fit for the occupation and use of the Lessee or accessible to the Lessee as the case may be.
- (b) The abatement of the Amounts Payable referred to above shall not apply in case of destruction or damage caused by the Lessee or any officer, member, employee, agent, contractor or invitee of the Lessee or if any policy or policies of insurance have been vitiated or payment of the policy moneys refused because of the negligence, act, default or omission of the Lessee or of any officer, member, employee, agent, contractor or invitee of the Lessee.

### 8.2 Total Damage or Destruction

If the Premises are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for occupation and use either party may by notice in writing to the other of them given within forty five Business Days after the event determine this Lease and thereupon this Lease is determined without prejudice however to the liability of the Lessee under this Lease up to the date of determination.

## 9 GST

- (a) Unless otherwise expressly stated, all Rent, prices or other sums payable or consideration to be provided under or in accordance with this document is exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this document, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document.
- (c) If this document requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
  - (i) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense ("net amount"); and
  - (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.
- (d) If a GST inclusive price is charged, the supplier must provide the recipient of the supply a valid tax invoice at or before the time of payment.

## 10 LIMITATION OF LIABILITY OF LESSOR

The Lessor's obligations under this document:

- (a) bind only the person holding the reversionary estate of the Premises immediately expectant upon the expiry of the Term; and
- (b) only render the Lessor liable in damages when the act omission or default giving rise to damages occurs while the Lessor is the registered proprietor of the Premises or while the Premises are vested in the Lessor (as the case may be).

## 11 SPECIAL CONDITIONS

The Lessor and the Lessee agree that the special conditions (if any) set out in item 7 of **schedule 1** shall apply and agree with each other to observe and perform the obligations on the part of each of them set out in item 7 of **schedule 1**.

## 12 DISPUTE RESOLUTION

### 12.1 Notice of Dispute

- (a) If a difference or dispute (together called a "**Dispute**") between the parties arises out of or relates to this document, or the breach, termination, validity or subject matter of it, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, then any party may give the other a written notice of dispute adequately identifying and providing details of the Dispute ("**Notice of Dispute**").
- (b) Notwithstanding the existence of a Dispute, all parties will, subject to this document, continue to perform the agreement evidenced by this document.

### 12.2 Conference

Within ten Business Days after receiving a Notice of Dispute, the parties will confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party will be represented by a person having authority to agree such resolution or methods. All aspects of every such conference, except the fact of its occurrence, will be privileged.

### 12.3 Expert mediation

- (a) If the Dispute is not resolved within the following five Business Days (or such further period as the representatives may agree is appropriate), the parties in dispute agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre ("**ACDC**") before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this document.
- (c) This clause does not merge on the expiration or sooner determination of this Lease.

**12.4 Exchange of information**

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the Dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by **clause 12** for any purpose other than an attempt to settle a Dispute between the parties.

**12.5 Termination of dispute resolution**

After expiration of the time established by or agreed under this clause for agreement on the dispute resolution process, any party which has complied with the provisions of **clauses 12.1 to 12.5**, may in writing terminate the dispute resolution process provided for in those clauses and may then refer the Dispute to arbitration.

**12.6 Agreement to arbitrate**

- (a) If the parties fail to settle any Dispute in accordance with **clause 12.3**, that Dispute will be submitted to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.
- (b) This clause does not merge on the expiration or sooner determination of this Lease.

**12.7 Selection of arbitrator**

Before establishment of the arbitral tribunal, a party may, without any inconsistency with this agreement to arbitrate or the dispute resolution procedures set out above, seek interim or provisional relief in respect of the subject matter of the Dispute from any Court having jurisdiction. Such interim or provisional relief may be vacated, continued or modified by the arbitral tribunal at the request of any party. Any party may seek, to the full extent allowed by law, judicial enforcement, in a Court having jurisdiction, of any interim or provisional relief granted by the arbitral tribunal.

**12.8 Governing law**

The law of the arbitration will be the law of Western Australia.

**12.9 Place and language of arbitration**

The arbitration will be conducted in Perth, Western Australia. The parties waive, to the fullest extent allowed by law, any defence to an action to compel arbitration based on the argument that the venue selected is in any way inconvenient or inappropriate, or that the party will in any respect be deprived in such venue of its rights effectively to arbitrate the dispute. The language of the arbitration will be English.

**13 MISCELLANEOUS PROVISIONS**

The Lessor and the Lessee agree that:

**13.1 Notices**

Any notice to be given pursuant to this Lease is deemed to have been duly served on the party to whom it is to be given if served in the manner provided in Section 135 of the Property Law Act, 1969 and, in addition, in the case of a notice to the Lessee if left addressed to the Lessee at the Premises.

### 13.2 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 monthly Administration Fee equivalent to one twelfth of the aggregate of the Rent payable upon the expiry of the Term which would be payable by the Lessee if an extension of the Term had been granted at the expiry of the Term and otherwise on the same terms and conditions as this Lease (except **clause 3.2**).

### 13.3 Waiver

No waiver by the Lessor of any breach of any provision of this Lease by the Lessee operates as a waiver of another breach of any provision of this Lease by the Lessee.

### 13.4 Severance

If any part of this Lease is or becomes void or unenforceable then that part is or will be severed from this Lease so that all parts not void or unenforceable remain in full force and effect and unaffected by that severance.

### 13.5 Statutory Powers

The powers conferred by or under any statute except to the extent inconsistent with the terms and provisions expressed in this Lease) are in augmentation of the powers conferred on the Lessor by this Lease.

### 13.6 Governing Law and Jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws in force in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### 13.7 Joint and Several Liability

An obligation of two or more persons binds them jointly and severally.

### 13.8 Time of the Essence

Time is of the essence in respect of the performance and observance by the Lessee of the provisions of this Lease.

## 14 REDEVELOPMENT

### 14.1 Lessee Acknowledgement

The Lessee acknowledges:

- (a) The Lessor may redevelop the Premises and such redevelopment may occur during the Term of the Lease;
- (b) In the event the Lessor should at any time on or after ten years of the Term of the Lease wish to redevelop the Premises, then the Lessor may terminate this Lease on five years written notice to the Lessee ("the **Termination Notice**")

- (c) In the event the Lessor issues a Termination Notice to the Lessee, the parties agree the following will apply:
- (i) at the expiration of the Termination Notice, the Lessee must vacate the Premises and deliver up vacant possession in accordance with the requirements of clause 5.14; and
  - (ii) no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease in accordance with this clause.
- (d) A certificate signed by or on behalf of the Lessor shall be full and sufficient evidence of the fact that the Lessor is redeveloping the Premises.
- (e) In the event that the Western Australian Government requires redevelopment of the land that is the subject of this Lease, the Lessee acknowledges that the City of Melville will be required to observe any notice period advised by the Western Australian Government that may not provide a Termination Notice period as detailed in 14.1(b) above.

SUBJECT TO LEGAL REVIEW

**SCHEDULE 1****1. Premises** (Clauses 1.1 and 3.1)

Melville Bowling Club at 592 Canning Highway, Alfred Cove being a portion of Lot 39 D 17693 CT Volume 1185 Folio 584. More particularly being the land, the structures and the facilities within and including the perimeter fencing delineated in red on the attached Aerial View Plan.

**2. Rights** (Clause 3.1)

None

**3. Reservations** (Clause 3.1)

None

**4. Term** (Clause 3)**4.1 Initial term** (Clause 3.1)

Fifty (50) years commencing 1<sup>st</sup> October 2020

**4.2 Further term** (Clause 3.2)

Nil (0) years

**5. Rent** (Clause 4)

Annual Administration fee of **\$681.30** excluding GST as adopted in the 2019/2020 Council Budget. The Annual Administration Fee will be reviewed and set by Council each year in the City of Melville's Annual Budget and will be increased annually by December CPI (Perth All Groups) The Annual Administration Fee will apply from 1 July in each year.

**6. Purpose for which Leased Premises to be Used** (Clause 5.6(b))

The premises are to be used for the purpose of recreation and other related uses, subject to the granting of applicable land use and development approvals.

**7. Special Conditions (Clause 10)****7.1** Likely outgoings and percentage of outgoings to be paid by the Lessee in accordance with Clause 5.1 are listed below. This list is neither exhaustive nor exclusive but is representative of the scope.

• Water Rates	100%
• Water Consumption	100%
• Sewerage Rates	100%
• FESA (DFES) Levy	100%
• State Land Tax	100%
• Local Government Rates	100%
• Electricity	100%
• Gas	100%
• Telephone/Fax & Data Lines	100%
• Refuse Removal	100%
• Building Insurance	100%

- Contents Insurance 100%
- GST (Where liability is with the Lessee) 100%

8. Upon request the Lessee must give the Lessor Annual Financial Statements audited by a member of the Australian Society for CPA's or of the Institute of Chartered Accountants or provide Annual Financial Statements that has been accepted by the Lessee's Annual General Meeting at the discretion of the Lessor.
9. The Lessee will provide to the Lessor a list of contacts within seven days of the Lessee's Annual General Meeting.
10. The Lessee is to ensure that all floodlighting shall be installed and operated in accordance with the Council's Flood and Security Lighting (CP-58) policy or any other relevant policy which may be amended or developed in the future.

SUBJECT TO LEGAL REVIEW

**Appendix A  
Maintenance Obligations**

**1. Lessee's Maintenance Obligations**

- 1.1. To maintain and keep in good order and repair the Premises and all those parts of the Land and Buildings used by the Lessee or its employees, servants, agents or invitees and where repair or maintenance to such area is required, only to use appropriately qualified and licensed tradesmen (structural maintenance to be included)
- 1.2. At the Lessee's cost to keep clean and sanitary the Premises and all those parts of the Land and Buildings used by the lessee or its employees, servants, agents or invitees
- 1.3. It is the responsibility of the Lessee to comply with the requirements of the Australian Standard to ensure that all portable plug-in equipment at the workplace are safe and appropriately inspected, tested and maintained by a competent person. The Lessor reserves the right to remove any equipment that appears deficient.

**2. Lessor's Maintenance Obligations**

- 2.1. To maintain and keep in good order and repair the property forming part of the Reserve outside of, and immediately adjacent to the Premises.

Lessee:	Lessor:
Lessee:	

SUBJECT TO LEGAL REVIEW

**EXECUTED** as an agreement.

**Lessor**

On this \_\_\_\_\_ day of \_\_\_\_\_ 2020

**CITY OF MELVILLE**

.....  
Chief Executive Officer

.....  
Print Name

**Lessee**

On this \_\_\_\_\_ day of \_\_\_\_\_ 2020

**MELVILLE BOWLING CLUB INC.**

.....  
Signature of Authorised Signatory (1)

.....  
Signature of Authorised Signatory (2)

.....  
Print Name

.....  
Print Name

.....  
Position held

.....  
Position held

SUBJECT TO LEGAL REVIEW

