



Lease

Approved form 2017-82730 Reg 3 of the Transfer of Land Regulations 2004

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Jurisdiction

State of Western Australia

Legislation

Transfer of Land Act 1893

Land Administration Act 1997

Lodging party details

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Land / Interest

Title(volume-folio)	Extent	Land description	Interest
LR3053-825	Part	AS TO PORTION ONLY - THAT PART OF LOT 11241 ON DEPOSITED PLAN 217553 IDENTIFIED ON THE PLAN ANNEXED TO THE LEASE AS ANENXURE 1	CROWN LAND

Lessor(s)

CITY OF MELVILLE OF LOCKED BAG 1, BOORAGOON, WA 6954

Lessee(s)

STATE OF WESTERN AUSTRALIA (ACTING THROUGH THE DEPARTMENT OF LOCAL GOVERNMENT, SPORT AND CULTURAL INDUSTRIES) OF 246 VINCENT STREET LEEDERVILLE, WA 6007

Terms and conditions

Commencement 11/08/2022
Duration 21 years 0 months 0 days
Option to renew Yes

Lease of Point Walter Recreation Camp

City of Melville

State of Western Australia



McLEODS

Barristers & Solicitors

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Details

Parties

City of Melville

of Locked Bag 1, Booragoon, Western Australia 6954
(Lessor)

State of Western Australia

acting through the Department of Local Government, Sport and Cultural Industries
of 246 Vincent Street Leederville, Western Australia 6007
(Lessee)

Background

- A The Lessor has the care, control and management of the Land pursuant to a management order.
- B The Lessor has agreed to lease, and the Lessee has agreed to take a lease of a portion of the Land, being more particularly the Premises, upon the terms and conditions contained in this Lease.

Agreed terms

1. Definitions

Unless otherwise required by the context or subject matter the following words have these meanings in this Lease:

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

Basic Consideration means all consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to **clause 21**);

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 5** of the Schedule;

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 (if any) specified in **Item 4** of the Schedule;

Good Repair means good and substantial tenable repair and in clean, good working order and condition;

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Input Tax Credit has the meaning that it bears in section 195-1 of the GST Act.

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;

Improvements means all buildings and permanently affixed structures, fixtures and other improvements constructed or installed on the Premises whether before or after the Commencement Date;

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 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;

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

Permitted Purpose means the purpose or purposes set out in **Item 7** of the Schedule;

Premises means the area of the Land to be leased to the Lessee as more particularly described at **Item 2** of the Schedule;

Rent means the rent specified in **Item 6** of the Schedule as varied from time to time under this Lease;

Schedule means the Schedule to this Lease;

Tax Invoice has the meaning which it bears in section 195-1 of the GST Act;

Taxable Supply has the meaning which it bears in section 195-1 of the GST Act.

Term means the term of years specified in **Item 3** of the Schedule; and

Termination means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over; and

Written Law includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority.

2. Grant of lease

- (1) Subject to paragraph (2), the Lessor 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.
- (2) This Lease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*. The parties acknowledge that the Minister for Lands' consent to this Lease is annexed hereto as **Annexure 2**.

3. Quiet enjoyment

Except as provided in the Lease, 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.

4. Rent and other payments

4.1 Rent

The Lessee covenants with the Lessor to pay to the Lessor the Rent in the manner set out at **Item 6** of the Schedule on and from the Commencement Date clear of any deductions.

4.2 Outgoings

- (1) The Lessee covenants with the Lessor 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 service charges and similar such 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 water consumption 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 required by the Lessee;
 - (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 4.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment

4.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, the Lessee covenants 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.

4.4 Costs

- (1) The Lessee covenants with the Lessor to pay to the Lessor on demand, and subject to the provision of a tax invoice:
 - (a) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies;
 - (b) all duty, fines and penalties (except those fines and penalties incurred due to an act or omission of the Lessor) payable under the *Duties Act* 2008 and other statutory duties or taxes payable on or in connection with this Lease; and
 - (c) all registration fees in connection with this Lease (if any).
- (2) The Lessee covenants with the Lessor 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 the Lessee's Agents;
- (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 action or proceedings arising out of or incidental to any matters referred to in this clause or any matter arising out of this Lease.

4.5 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.

4.6 Accrual of amounts payable

The parties agree that Amounts Payable accrue on a daily basis.

5. Insurance

- (1) The Lessee must at its own expense during the Term effect, maintain and keep current with the Western Australian government's self-insurance fund:
 - (a) public liability insurance for a sum not less than the sum set out in **Item 8** of the schedule;
 - (b) a policy of insurance to cover all Improvements and all the Lessee's fixtures, fittings, equipment and furnishings against loss or damage by fire, fusion, explosion, smoke, lightning, flood, storm, tempest, rainwater, earthquake, riot, civil commotion, malicious damage, impact by vehicles, sprinkler leakage, water damage, aircraft and articles dropped from aircraft and other risks against which a tenant may and does ordinarily insure in the full replacement value;
 - (c) employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Lessee employed in, about or from the Premises; and
 - (d) personal accident insurance including insurance in respect of all volunteers of the Lessee employed in, about or from the Premises.
- (2) In case of destruction of or damage to any Improvements or other property referred to in paragraph (b) from any cause covered by the insurance effected by the Lessee under paragraph (b) Lessee must expend all money received from the insurance in re-instating or replacing it.
- (3) As and when requested by the Lessor, the Lessee must give to the Lessor's reasonable satisfaction sufficient evidence of the existence of those insurances or provide certificates of currency in respect of those insurances.

6. Indemnity

6.1 Lessee responsibilities

The Lessee is responsible and liable for all negligent or other wrongful 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.

6.2 Indemnity

(1) The Lessee indemnifies, and shall keep indemnified, the Lessor and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor and/or the Minister for Lands, or brought, maintained or made against the Lessor and/or the Minister for Lands, 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,

to the extent 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) 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
- (h) a negligent or wrongful act or omission of the Lessee.

6.3 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 6.2** will be reduced by the extent of such payment; and
- (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.

6.4 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.

6.5 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 and the Minister for Lands 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 the Lessee; and
 - (ii) loss of or damage to the Premises or personal property of the Lessee;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.

6.6 Limit of Lessor's liability

- (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.
- (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.

7. Maintenance, repair and cleaning

7.1 Maintenance

The Lessee agrees during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises clean and in Good Repair having regard to the age of the Premises at the Commencement Date.

7.2 Cleaning

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

7.3 Pest control

The Lessee must keep the Premises free of any vermin or any other recognised pests and the cost of extermination will be borne by the Lessee.

7.4 Maintain surroundings and landscaping

The Lessee must regularly inspect and maintain in good condition any of the Premises' landscaping, reticulation, flora, gardens lawns, shrubs, hedges and trees.

7.5 Maintain roadways

The Lessee agrees to maintain all of the Premises' roadways in good trafficable condition.

7.6 Comply with all reasonable conditions

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 (provided they do not conflict with the provisions of this Lease).

7.7 Acknowledgement of state of repair 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.

7.8 No obligation to Lessor to repair or maintain

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, except for damage caused or contributed to by the Lessor or any person authorised by the Lessor. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Premises.

8. Alterations

8.1 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) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
 - (c) remove alter or add to any fixtures, fittings or facilities in or on the Premises.

- (2) The Lessee acknowledges and agrees that all alterations must be in strict accordance with any planning or building approvals for such alterations.

8.2 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 8.1** 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;
 - (ii) require that work be carried out in accordance with the Building Code of Australia; and
 - (iii) 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 8.1**:
- (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 and must strictly comply with such consents or approvals.

8.3 Cost of Works

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

8.4 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.

9. Use

9.1 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 the Permitted Purpose; 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 unless they are stored in proper containers and are used in accordance with all relevant Laws; or

- (e) do any act or thing which might result in excessive stress or harm to any part of the Premises.

9.2 Operation of Business

(1) The Lessee must:

- (a) conduct its business on the Premises at all times in a proper efficient and reputable manner and must not use the Premises nor permit the Premises to be used for any illegal, immoral or improper use or purpose;
- (b) not without the prior written consent of the Lessor use or permit to be used any other method in lighting the Premises other than by electricity and will not use or permit or suffer to be used any method of heating other than by electricity, gas or oil;
- (c) keep in force all licences and permits required for the carrying on of any business conducted by it in or upon the Premises; and
- (d) deliver to the Lessor any notices or orders served on or received by the Lessee in respect of the Premises or the conduct of the Lessee's business on the Premises.

9.3 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 Written Law for its use of the Premises.

9.4 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.

10. Lessor's right of entry

10.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor 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 is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

10.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 10.1(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

11. Statutory obligations and notices

11.1 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, including without limitation all relevant laws relating to occupational health and safety and the health and safety of all persons entering upon 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;
- (c) comply with all relevant state and commonwealth law and all relevant codes, including without limitation the Building Code of Australia, and all relevant standards published by Standards Australia;
- (d) 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
- (e) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises (except where they are the responsibility of the Lessor) or to the business the Lessee carries on at the Premises.

11.2 Safety & Testing Obligations

- (1) The Lessee acknowledges and agrees that it is fully responsible at its cost for ensuring that the Premises, and any fixtures or fittings located on the Premises, are regularly tested, maintained and inspected to ensure that the Premises and such fixtures and fittings comply with all statutory requirements and are safe for use.
- (2) To comply with its obligation pursuant to **clause 11.2(1)** above, the Lessee acknowledges that it will be required to, amongst other things:
 - (a) comply with the requirements of the *Occupational Safety and Health Act 1984*, including without limitation the requirement for all portable plug-in electrical

equipment and residual current devices to be safe and appropriately inspected, tested and maintained by a competent person;

- (b) comply with all relevant requirements of the Department of Fire & Emergency Services (**DFES**), including without limitation the requirement to ensure that all fire protection and firefighting equipment located, or installed at or on the Premises, is tested regularly for compliance with Australian Standards and DFES's requirements; and
- (c) ensure that the emergency/exit lighting systems on the Premises (if applicable) are adequately maintained in accordance with the requirements of the Building Code of Australia and relevant Australian Standards.

11.3 No Fetter

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.

12. Report to Lessor

The Lessee must immediately report to the Lessor:

- (a) 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
- (b) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

13. Default

13.1 Events of Default

A default occurs if:

- (a) any Amounts Payable remain unpaid after becoming due and remains unpaid for one month after written notice has been given to the Lessee to pay such Amounts Payable;
- (b) the Lessee is in breach of any of the Lessee's Covenants other than the covenant to pay the Amounts Payable for 28 days after written notice has been given to the Lessee to rectify the breach;
- (c) the Premises are vacated and remain so for a continuous period of 28 days; or
- (d) 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.

13.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 13.1** the Lessor may:

- (a) upon written notice to the Lessee, 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 16**,

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.

13.3 Lessor may Remedy Lessee's default

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 (being not less than 28 days), 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 reasonable costs and expenses of remedying each breach or default.

13.4 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 of 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.

13.5 Essential Terms

Each of the Lessee's Covenants in **4** (Rent and Other Payments); **5** (Insurance); **6** (Indemnity); **7** (Maintenance, Repair and Cleaning), **9** (Use) and **19** (No assignment, subletting or charging) is an essential term of this Lease but this clause does not mean or imply that there are no other essential terms in this Lease.

13.6 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 AGREES 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 lapse 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 obligation set out in this **clause 13.6(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 13.6(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 lapse 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.

14. Repudiation by Lessee

14.1 Compensation

In the event that the Lessee's conduct (whether by acts or omissions) constitutes a repudiation of the Lease (or of the Lessee's obligations under the Lease) or constitutes a breach of any Lease covenants, it is agreed that:

- (a) the Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach; and
- (b) the Lessor shall be entitled to recover damages against the Lessee in respect of the repudiation or breach of covenant for the damage suffered by the Lessor during the entire Term of this Lease.

14.2 Entitlement to Recover Damages

The Lessor's entitlement to recover damages shall not be affected or limited in the event that:

- (a) the Lessee abandons or vacates the Premises;
- (b) the Lessor elects to re-enter or to terminate the Lease;
- (c) the Lessor accepts the Lessee's repudiation; or

- (d) the Parties' conduct constitutes a surrender by operation of law.

14.3 Legal Proceedings

The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Term, including the periods before and after the Lessee has vacated the Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in **clause 14.2**, whether the proceedings are instituted either before or after such conduct.

15. Option to renew

If the Lessee at least three months, but not earlier than six months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term 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 will grant to the Lessee a lease for the Further Term at the Rent and on the same terms and conditions other than this clause in respect of any Further Terms previously taken or the subject of the present exercise.

16. 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.

17. Obligations on Termination

17.1 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 and repair, replace or make good to the satisfaction of the Lessor any of the Premises where they have been damaged by the Lessee or any of the Lessee's Agents.

17.1 Remove Lessee's 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 including without limitation any signs (other than air-conditioning plant and fire equipment, security alarms, window treatments, carpets 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.

17.2 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; and
- (b) surrender to the Lessor all keys, swipe cards, and security access devices held by the Lessee.

17.3 Lessor can Remove Lessee's Property on Re-Entry

If the Lessee fails to remove any such fixtures or fittings and any other chattels, stock or goods belonging to the Lessee in accordance with **clause 17.1** within fourteen (14) days from the determination of the Term, the Lessor may at its option:

- (a) cause any such fixtures or fittings to be removed and stored at the cost of the Lessee and any such damage to be made good and any such alterations to be so re-altered and may recover the costs thereof from the Lessee as a liquidated debt payable on demand; or
- (b) elect to treat any such fixtures or fittings and any other chattels, stock or goods of the Lessee to be deemed abandoned by the Lessee and such property shall then be and become the property of the Lessor absolutely.

17.4 Obligations to continue

The Lessee's obligations under this clause will survive termination.

18. Damage or Destruction of Premises

If the Premises, the Improvements or any part of the Premises or the Improvements are destroyed or damaged so as to be unfit for occupation or use during the Term:

- (a) the Lessee must:
 - (i) re-instate the Premises and Improvements so that they do not substantially differ from the Premises and Improvements that existed prior to the damage or destruction occurring;
 - (ii) commence re-instatement within 6 months of the damage or destruction occurring; and
 - (iii) ensure the construction materials used in the reinstatement of the Premises and Improvements are not inferior to those that existed in the Premises prior to the damage or destruction occurring;
- (b) if the Lessee does not commence the re-instatement within 6 months of the damage or destruction occurring, the Lessor may provide written notice to the Lessee requiring commencement of the re-instatement (**Re-instatement Notice**). Where the re-instatement is not commenced within 90 days of the Lessee receiving a Re-instatement Notice, the Lessor may elect to:

- (i) terminate the Lease by written notice to the Lessee as from the date of that notice without prejudice to the rights of the Lessor in relation to any previous Event of Default; or
 - (ii) re-instate the Premises and Improvements so that they do not substantially differ from the Premises and Improvements that existed prior to the damage or destruction occurring and the Lessee must pay to the Lessor on demand, the costs incurred in re-instating the Premises and Improvements;
- (c) the Lessor is not obliged to:
- (i) provide any alternative Premises to the Lessee during any period that the Premises are partially or totally destroyed or damaged; or
 - (ii) provide any abatement of Rent or outgoings during any period

19. No assignment, sub-letting and charging

19.1 No assignment or sub-letting

Subject to **clause 19.3**, the Lessee must not assign the leasehold estate in the Premises nor sub-let, Licence, or sub-licence, part with possession, or dispose of the Premises or any part of the Premises.

19.2 No mortgage or charge

The Lessee must not mortgage nor charge the Premises.

19.3 Right to hire premises or part thereof

The parties acknowledge and agree that the Lessee may hire out the premises or part thereof for terms not exceeding three months without the consent of the Lessor, provided that such hire is consistent with the Permitted Purpose.

19.4 Property Law Act 1969

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

20. Disputes

20.1 Referral of Dispute: Phase 1

Except as otherwise provided, any dispute arising out of this Lease is to be referred in the first instance in writing to the Lessor's Representative as nominated in writing by the Lessor from time to time (**Lessor's Representative**) who shall convene a meeting within 10 days of receipt of such notice from the Lessee or such other period of time as is agreed to by the parties between the Lessor's Representative and an employee of the Lessee for the purpose of resolving the dispute (**Original Meeting**).

20.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 20.1** of this Lease then the dispute shall be referred in writing to the CEO of the Lessor who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the parties

between the CEO and or director of the Lessee or a senior representative of the Lessee for the purpose of resolving the dispute.

20.3 Appointment of Mediator: Phase 3

- (1) The parties may, if mutually agreed following the meeting required by clause submit the dispute to mediation in accordance with the Mediation Rules of the Institute of Arbitrators and Mediators Australia as applicable at the date of the Dispute.
- (2) The mediator will be a dispute resolution practitioner with legal qualifications and at least 10 years' experience in the legal profession, as agreed between the parties or, failing agreement, a mediator satisfying the requirements of this clause will be appointed by the President of the Institute of Arbitrators and Mediators Australia.
- (3) Any mediation meetings and proceedings under this clause must be held in Perth, Western Australia unless otherwise agreed by the parties.
- (4) The costs of any mediation meetings and proceedings under this clause will be shared equally between the parties.
- (5) If the dispute is submitted to mediation and 20 Business Days (or any other period agreed to in writing between the Parties) after the appointment of a mediator under this clause, the dispute remains unresolved (whether in whole or in part), either Party may commence court proceedings in relation to the dispute.

21. Goods and services tax

21.1 Lessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the lease of the Land or any goods, services or other Taxable Supply supplied under this Lease then, unless the Lessor is liable for the payment of a given Taxable Supply, as from the date of any such introduction or application:

- (a) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (b) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

21.2 Increase in GST

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with **clause 21.1(b)**.

21.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to **clause 21.2** the Lessor shall at least 1 month before the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

22. Notice

22.1 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.

22.2 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 22.1(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 22.1(b)**, on the fifth business day following the date of posting of the Notice.

23. Additional terms, covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 9** 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. If there is any inconsistency between the provisions of **Item 9** of the Schedule and the remaining provisions of this Lease, the provisions of **Item 9** of the Schedule will prevail to the extent of that inconsistency

24. General Provisions

24.1 Lessor's Consent

The Lessee acknowledges and agrees with the Lessor that:

- (a) if the Lessor consents to any matter referred to in this Lease, the Lessor may consent subject to any conditions that it deems reasonably necessary; and
- (b) if the Lessor consents to any matter referred to in this Lease, the Lessee must, to the reasonable satisfaction of the Lessor, comply with any condition imposed by the Lessor.

24.2 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.

24.3 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.

24.4 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 unless that severance materially affects the substance of this Lease.

24.5 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.

24.6 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.

24.7 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.

24.8 No Absolute Caveat

The Lessee must not lodge an absolute caveat at Landgate against the Certificate of Title for the Premises, unless the Lessee has first obtained the written consent of the Lessor.

24.9 Waiver

- (1) 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.
- (2) 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.

24.10 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. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia and courts of appeal from them.

24.11 Interpretation

In this Lease, unless expressed to the contrary:

- (a) Words using:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender includes each gender;
- (b) A reference to:
 - (i) a natural person includes a body corporate or local government; and
 - (ii) a body corporate or local government includes a natural person;
- (c) A reference to a professional body includes a successor to or substitute for that body;
- (d) A reference to 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;
- (e) A reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) A reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) A reference to 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;
- (h) A reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to:
 - (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) 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 but without implying that part performance of an obligation is performance of the whole;
- (k) If a Party comprises two or more persons the obligations and agreements on their part bind 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;
- (l) The agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include:

- (i) an agreement not to permit that act or thing to be done or omitted to be done by the Lessee's Agents; and
 - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done; and
- (m) Except in the Schedule headings do not affect the interpretation of this Lease.

Schedule

Item 1 Land

Reserve 4813, Lot 11241 on Deposited Plan 217553 being the whole of the land comprised in Certificate of Crown Land Title Volume LR LR3053 Folio 825.

Item 2 Premises

That part of the Land as is more particularly identified on the plan annexed hereto as **Annexure 1** and comprising an area of 6.977 hectares including all Improvements and services located thereon.

Item 3 Term

21 years commencing on 11 August 2022 and expiring on 10 August 2043.

Item 4 Further Terms

21 years commencing on 11 August 2043 and expiring on 10 August 2064.

Item 5 Commencement Date

11 August 2022.

Item 6 Rent

\$1 dollar per annum, payable on demand.

Item 7 Permitted Purpose

Camp boarding and other educational, recreational and community activities.

Item 8 Public Liability Insurance

Twenty million dollars (\$20,000,000.00).

Item 9 Additional terms and conditions

9.1 No commercial activities

The Lessee must not carry on or suffer or allow to be carried on the Premises any activity any commercial business or trade, without the prior written consent of the Lessor.

9.2 Warden

The Lessee must employ or provide a warden to be resident on the Premises at all times.

9.3 Premises to be responsibly managed and supervised

The Lessee must ensure that the Premises are responsibly managed and supervised at all times.

Annexure 2 – Minister for Lands' consent



Department of Planning,
Lands and Heritage

Land Use Management

Case: 2201509
Our ref: File 07924-1900, IDA11887138.
Enquiries: Kevin Harrison, ph 9791 0860
Fax: 6118 8116

22nd June 2022

Chief Executive Officer
City of Melville
10 Almondbury Road
Booragoon WA 6154

Email only Sharima.West@melville.wa.gov.au

Dear *Sharima*

Section 18 Ministers Consent for proposed Lease over portion of Reserve 4813, City of Melville between the Department of Local Government, Sport, and Cultural Industries.

Thank you for your recent correspondence regarding permission to Lease part of Reserve 4813 which is set aside for the purpose of Recreation and managed by the City of Melville with power to lease for any term not exceeding 42 years subject to the consent of the Minister for Lands.

In accordance with section 18 of the *Land Administration Act 1997* (LAA) approval from the Minister for Lands is granted to the proposed Lease provided to the Department of Planning, Lands and Heritage by email dated 17th June 2022 on the condition that the final document executed by the parties is on the same terms as that provided to the Department with that email. If the final document executed by the parties is not on the approved terms, then it may be void under section 18 LAA.

Please note that this approval is for the purposes of section 18 LAA only and does not constitute an endorsement as to the terms and effect of the document. The Department cannot provide any advice in respect of the Lease and recommends that each party obtain their own independent advice as to their rights and obligations under the Lease.

This approval is subject to the registration requirements of the *Transfer of Land Act 1893*. You will need to provide a copy of this letter to Landgate if the documents are to be lodged for registration at Landgate.

Should you have any enquiries please don't hesitate to contact me on any of the above details.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'K. Harrison'.

Kevin Harrison
Senior Land Officer
Case Delivery

Postal address: Locked Bag 2506 Perth WA 6001 Street address: 140 William Street Perth WA 6000
Tel: (08) 6551 8002 Info@dpnh.wa.gov.au www.dph.wa.gov.au
ABN 68 565 723 484
wa.gov.au

Operative words

The lessor(s) hereby leases to the lessee(s) the land described above in the terms and conditions set out or referred to in this lease subject to the limitations, interests, encumbrances and notifications as shown on the certificate of title and/or otherwise affect the land under the legislation stated above.

Execution date

Lessor(s) execution

Executed by CITY OF MELVILLE

Signature _____
Signer name _____
Signer designation
.....EXECUTED
PURSUANT TO SECTION 9.49A
OF LOCAL GOVERNMENT ACT

Lessee(s) execution

Witness must be an adult person. The witness must state their full name, address and occupation.

Executed on behalf of STATE OF WESTERN AUSTRALIA
(ACTING THROUGH THE DEPARTMENT OF LOCAL
GOVERNMENT, SPORT AND CULTURAL INDUSTRIES)
under authority of the
.....

Witness signature _____
Witness full name _____
Witness address _____

Witness occupation _____
Witness phone _____

Signature _____
Signer name _____
Signer organisation
Signer designation