

Lease – Wandering Golf Course

Shire of Wandering

Wandering Golf Club (Incorporated)

Table of Contents

- Details** **1**

- Agreed terms** **1**

 - 1. Definitions** **1**
 - 2. Grant of lease** **2**
 - 3. Quiet enjoyment** **2**
 - 4. Rent and other payments** **3**
 - 4.1 Rent 3
 - 4.2 Outgoings 3
 - 4.3 Interest 3
 - 4.4 Costs 3
 - 4.5 Payment of Money 3
 - 4.6 Accrual of amounts payable 4
 - 5. Insurance** **4**
 - 5.1 Public Liability Insurance 4
 - 5.2 Contents Insurance 4
 - 5.3 Building Insurance 4
 - 5.4 Details and receipts 4
 - 5.5 Not to invalidate 4
 - 5.6 Report 5
 - 5.7 Lessee’s equipment and possessions 5
 - 6. Indemnity** **5**
 - 6.1 Lessee responsibilities 5
 - 6.2 Indemnity 5
 - 6.3 Obligations Continuing 6
 - 6.4 No indemnity for Lessor’s negligence 6
 - 6.5 Release 6
 - 6.6 Limit of Lessor’s liability 6
 - 7. Maintenance, Repair and Cleaning** **7**
 - 7.1 Generally 7
 - 7.2 Cleaning 7
 - 7.3 Pest control 7
 - 7.4 Comply with all reasonable conditions 7
 - 7.5 Responsibility for Securing the Leased Area 7
 - 7.6 Maintain surroundings 7
 - 7.7 Acknowledgement of state of repair of Leased Area 7
 - 8. Alterations** **7**
 - 8.1 Restriction 7
 - 8.2 Consent 8
 - 8.3 Cost of Works 8
 - 8.4 Conditions 8
 - 9. Use** **8**
 - 9.1 Restrictions on use 8
 - 9.2 No nuisance 9
 - 9.3 No warranty 9
 - 9.4 Leased Area subject to restriction 9
 - 9.5 Indemnity for costs 10

10.	Lessor's right of entry	10
10.1	Entry on Reasonable Notice	10
10.2	Costs of Rectifying Breach	10
11.	Statutory Obligations and Notices	10
11.1	Comply with Statutes	10
11.2	Safety & Testing Obligations	11
11.3	Indemnity if Lessee Fails to Comply	11
11.4	No Fetter	11
12.	Report to Lessor	11
13.	Alcohol	12
13.1	Consumption of alcohol	12
13.2	Liquor licence	12
14.	Default	12
14.1	Events of Default	12
14.2	Forfeiture	12
14.3	Lessor may remedy breach	13
14.4	Acceptance of Amount Payable By Lessor	13
14.5	Essential Terms	13
14.6	Breach of Essential Terms	13
15.	Damage or Destruction of Leased Area	14
15.1	Abatement of Rent	14
15.2	Total damage or destruction	14
15.3	Reinstatement	14
16.	Option to renew	15
17.	Holding over	15
18.	Obligation on Termination	15
18.1	Yielding up	15
18.2	Lessor can remove Lessee's property on re-Entry	16
18.3	Obligations to continue	16
19.	Assignment, sub-letting and charging	16
19.1	No Assignment	16
19.2	No Subletting without the Lessor's consent	16
19.3	Property Law Act 1969	16
19.4	No mortgage or charge	16
20.	Provision of information	17
20.1	Provision of information	17
21.	Disputes	17
22.	Caveat	17
23.	Notice	18
23.1	Form of delivery	18
23.2	Service of notice	18
23.3	Signing of notice	18
24.	General Provisions	18
24.1	Lessor's Consent	18
24.2	Acts by agents	18
24.3	Statutory powers	19
24.4	Severance	19

24.5	Variation	19
24.6	Moratorium	19
24.7	Further assurance	19
24.8	Waiver	19
24.9	Governing law	19
25.	Additional terms, covenants and conditions	19
	Schedule	20
	Signing page	21
	Annexure 1 - Sketch of Leased Area	22

Details

Parties

Shire of Wandering

of 22 Watts Street, Wandering, Western Australia
(Lessor)

Wandering Golf Club (Incorporated)

of 306 North Wandering Road, Wandering, Western Australia
(Lessee)

Background

- A The Lessor is registered as the proprietor of the Land.
- B The Lessor has agreed to lease and the Lessee has agreed to take a lease of the Leased Area upon the terms and conditions contained in this Deed.

Agreed terms

1. Definitions

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

Alterations means any of the acts referred to in **clause 8**;

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

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 his or her functions under this Lease;

Commencement Date means the date of commencement of the Term specified in **Item 4** 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 Term means the further term specified in **Item 3** of the Schedule;

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

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

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

Lease means this lease and any equitable or common law tenancy evidenced by deed as supplemented, amended or varied from time to time;

Leased Area means the leased area described at **Item 1** of the Schedule;

Lessee's Agents includes:

- (a) the sublessees, employees, agents, contractors, invitees and Lessees of the Lessee; and
- (b) any person on the Leased Area 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;

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

Parties means the Lessor and the Lessee;

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

Permitted Hours of Use means the purpose set out in **Item 7** of the Schedule;

Permitted Purpose means the purpose set out in **Item 6** of the Schedule;

Schedule means the Schedule to this Lease;

Term means the term of years specified in **Item 2** 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.

2. Grant of lease

The Lessor leases to the Lessee the Leased Area 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.

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 Leased Area 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 5** 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 Leased Area if relevant:
 - (a) services and other charges, including but not limited to rubbish collection charges;
 - (b) electricity and other power and light charges including but not limited to meter rents AND where possible the Lessee shall ensure that any accounts for all charges and outgoings in respect of electricity and other power and light charges are taken out and issued in the name of the Lessee;
 - (c) 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 Leased Area.

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 sixty (60) 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 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 work done at the Lessee's request; and
 - (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 4.4** 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

Amounts Payable accrue on a daily basis.

5. Insurance

5.1 Public Liability Insurance

The Lessee must take out and maintain an insurance for public liability:

1. Noting the interest of the lessor
2. For the sum of not less than million dollars (\$10,000,000) in respect of any one claim or any higher amount reasonably required by the lessor; and
3. With a reputable insurance company operating an insurance business within Australia

5.2 Contents Insurance

The Lessor has not fixtures, fittings, equipment and stock that require the Lessor to insure.

All other content insurance against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against will be the Lessee responsibility

5.3 Building Insurance

The Lessee must effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of any building(s) constructed on the Leased Area against damage arising from fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions and other standard insurable risks.

5.4 Details and receipts

In respect of the insurances required to be obtained by the Lessee pursuant to this **clause 5** the Lessee must:

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor, annually, copies of the certificates of currency in relation to those insurances; and
- (b) notify the Lessor immediately:
 - (a) when an event occurs which gives rise or might give rise to a claim under that may have repercussions for the Lessor; or
 - (b) when a policy of insurance is cancelled.

5.5 Not to invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Leased Area which might:

- (a) render any insurance effected under this clause, or any insurances on adjoining Leased Area, void or voidable; or
- (b) cause the rate of a premium for such to be increased for the Leased Area).

5.6 Report

The Lessee must report to the Lessor promptly in writing, and in addition verbally in an emergency:

- (a) any damage to the Leased Area of which it is aware; and
- (b) any circumstances of which it is aware and which are likely to be a danger or cause any damage or danger to the Leased Area or to any person in or on the Leased Area.

5.7 Lessee's equipment and possessions

The Lessee acknowledges it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

6. Indemnity

6.1 Lessee responsibilities

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Leased Area.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Leased Area 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

The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor, in respect of:

- (a) any loss whatsoever (including loss of use);
- (b) injury or damage of, or to, any kind of property or thing; and
- (c) the death of, or injury suffered by, any person,

caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

- (d) the use or occupation of the Leased Area by the Lessee or the Lessee's Agents;
- (e) any work carried out by or on behalf of the Lessee on the Leased Area;
- (f) the Lessee's activities, operations or business on, or other use of any kind of, the Leased Area;
- (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Leased Area or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (i) an act or omission of the Lessee.

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 to the extent it is directly caused by 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 Leased Area at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor from:
 - (a) 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 Leased Area or arising from the Lessee's use or occupation of the Leased Area by the Lessee;
 - (b) loss of or damage to the Leased Area or personal property of the Lessee; and
 - (c) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Leased Area or surrounding area

except to the extent that such loss or damage is directly caused by 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 registered proprietor of the Leased Area.
- (2) The Lessor will not be liable for loss, damage or injury to any person or property in or about the Leased Area however occurring and 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, except to the extent that any loss, damage or injury or failure to perform and observe any of the Lessor's Covenants is caused or contributed to by the negligent or wrongful act or omission of the Lessor or its servants, agents, contractors or invitees

- (3) 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 Generally

- (1) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Leased Area to maintain, replace, repair, clean and keep the Leased Area clean and in Good Repair.
- (2) The Lessee acknowledges and agrees that the Lessor has no obligation to repair or maintain the Leased Area, including without limitation structural repair or maintenance.

7.2 Cleaning

The Lessee must at all times keep and maintain the Leased Area in a clean and tidy state, free from refuse, rubbish, garbage and litter during the Term.

7.3 Pest control

The Lessee must manage the Leased Area so to control any vermin from breeding on the Reserve or any other recognised pests and the cost of extermination will be borne by the Lessee.

7.4 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 Leased Area.

7.5 Responsibility for Securing the Leased Area

The Lessee must ensure the Leased Area is appropriately secured at all times.

7.6 Maintain surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Leased Area.
- (2) The Lessee must care for such trees on the Leased Area as the Lessor may from time to time reasonably require.
- (3) The Lessee may not undertake any major clearing of any native trees and shrubs without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

7.7 Acknowledgement of state of repair of Leased Area

The Lessee acknowledges that it has inspected the Leased Area prior to the execution of this Lease and enters into the Lease with full knowledge of the state of repair of the Leased Area.

8. Alterations

8.1 Restriction

- (1) The Lessee must not without prior written consent:
 - (a) (a) from the Lessor;

- (b) from any other person from whom consent is required under this Lease;
- (c) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;
- (b) install road front hoardings or billboards to advertise non-related golf club activities; or
- (c) subject to the performance of the Lessee's obligations in **clause 7.6**, remove any flora or fauna, alter or cut down any flora, to sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Leased Area without approval from the Lessor.

8.2 Consent

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
 - (a) require that work be carried out in accordance with the Building Code of Australia; and
- (b) if the Lessor consents to any matter referred to in **clause 8.1**:
 - (a) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (b) 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) (a) use the Leased Area or any part of it for any purpose other than the Permitted Purpose; or
- (b) use the Leased Area 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 Leased Area any harmful, offensive or illegal act, matter or thing;
- (c) do or carry out on the Leased Area anything 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 Leased Area including but not limited to any inflammable fluids (fuel greater than 10,000 litres), acids or other hazardous materials as per the Department of Mines Western Australia Regulations;
- (e) do any act or thing which might result in excessive stress or harm to any part of the Leased Area;
- (f) allow accumulation of dirt and rubbish on the Leased Area or fail to store and keep all trade waste and garbage in proper receptacles;
- (g) use the Leased Area as the residence or sleeping place of any person.

9.2 No nuisance

The Lessee acknowledges and agrees with the Lessor that it shall:

- (a) not do or leave undone or suffer to be done or left undone any act, matter or thing whereby a nuisance or anything in the nature of which may be deemed to be a nuisance may exist or arise or continue upon or in connection with the Leased Area or the use thereof and to forthwith promptly abate any such nuisance or alleged nuisance.
- (b) pay to the Lessor on demand all sums of money which the Lessor may at any time and from time to time hereafter pay or expend to be called upon to repay in connection with performing, discharging or executing any requisitions or works or abating any nuisance or alleged nuisance referred to in **clause 9.2(a)** and which contrary to the agreement therein contained the Lessee neglects or fails to perform, discharge or execute.

9.3 No warranty

The Lessor gives no warranty:

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

9.4 Leased Area subject to restriction

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

9.5 Indemnity for costs

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

10. Lessor's right of entry

10.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor onto the Leased Area without notice in the case of an emergency, and otherwise upon reasonable notice:

- (a) (a) at all reasonable times;
- (b) (b) with or without workmen and others; and
- (c) (c) with or without plant, equipment, machinery and materials;
- (b) (b) for each of the following purposes:
 - (a) (a) to inspect the state of repair of the Leased Area and to ensure compliance with the terms of this Lease;
 - (b) (b) 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;
 - (c) (c) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Leased Area for which the Lessor is liable; and
 - (d) (d) 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 in **clause 10.1(b)(d)** 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) (a) comply promptly with all statutes and local laws from time to time in force relating to the Leased Area, including without limitation all relevant laws relating to occupational health and safety and the health and safety of all persons entering upon the Leased Area;
- (b) (b) comply promptly with the *Environmental Protection (Noise) Regulations 1997* (WA);
- (c) (c) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Leased Area;

- (d) 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;
- (e) 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 Leased Area; and
- (f) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Leased Area or to the business the Lessee carries on at the Leased Area.

11.2 Safety & Testing Obligations

- (1) The Lessee acknowledges and agrees that it is fully responsible at its cost for ensuring that the Leased Area, and any fixtures or fittings located on the Leased Area, are regularly tested, maintained and inspected to ensure that the Leased Area 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, 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.

11.3 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clauses 11.1 and 11.2**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clauses 11.1 and 11.2**.

11.4 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 act of vandalism or any incident which occurs on the Leased Area which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;

- (b) any occurrence or circumstances in the Leased Area of which it becomes aware, which might reasonably be expected to cause, in or on the Leased Area, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Leased Area and immediately deliver them to the Lessor.

13. Alcohol

13.1 Consumption of alcohol

The Lessee covenants and agrees:

- (a) not to use or allow the Leased Area to be used for the consumption or sale of alcohol without first obtaining a licence or permit under the *Liquor Control Act 1988*.

13.2 Liquor licence

The Lessee covenants and agrees that if a licence or permit is granted under the *Liquor Control Act 1988* for the Leased Area it must:

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Leased Area **clause 8** shall apply;
- (b) indemnify and keep indemnified the Lessor from and against any breach of the *Liquor Control Act 1988*, *Health (Food Hygiene) Regulations 1993*, *Liquor Control Regulations 1989* or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Leased Area.

14. Default

14.1 Events of Default

A default occurs if:

- (a) any Amounts Payable remain unpaid for sixty (60) days after a due date for their payment;
- (b) the Lessee is in breach of any of the Lessee's Covenants for sixty (60) days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (c) the association is wound up whether voluntarily or otherwise;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Leased Area on the Lessee's property;
- (f) the Leased Area are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the permitted purpose for six month period;
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Leased Area or in receipt of a rent and profits.

14.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 14.1** the Lessor may:

- (a) without notice or demand at any time enter the Leased Area 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 Leased Area from the Lessor as a tenant from month to month under **clause 17**,

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.

14.3 Lessor may remedy breach

If the Lessee:

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

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

14.4 Acceptance of Amount Payable By Lessor

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

14.5 Essential Terms

Each of the Lessee's Covenants in **clauses 4** (Rent and Other Payments), **5** (Insurance), **6** (Indemnity), **7** (Maintenance, Repair and Cleaning), **9** (Use) and **19.1** (Assignment, Subletting and Charging) are essential terms of this Lease but this clause **14.5** does not mean or imply that there are no other essential terms in this Lease.

14.6 Breach of Essential Terms

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

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee covenants with the Lessor that if the Term is determined:
 - (a) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or

- (b) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

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

- (d) the Lessee agrees that the covenant set out in this **clause 14.6(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 14.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Leased Area between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Leased Area 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.

15. Damage or Destruction of Leased Area

15.1 Abatement of Rent

If the Leased Area are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Leased Area have been rebuilt or made fit for the occupation and use of the Lessee, and in case of any dispute arising under this provision the same will be referred to arbitration under the provisions of the *Commercial Arbitration Act 2012* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the aware appears to have been overpaid.

15.2 Total damage or destruction

If the Leased Area are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for the occupation and use of the Lessee either Party may be notice in writing to the other of them given within sixty (60) days after the event elect to cancel and terminate this lease. The term will terminate upon such notice being given and the Lessee must vacate the Leased Area and surrender the same to the Lessor, but such termination will be without prejudice however to the liability of the Lessee under this Lease up to the date of termination.

15.3 Reinstatement

- (1) If the Leased Area are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for the occupation and use of the Lessee, the Lessor shall not be responsible for reinstatement of the Leased Area.
- (2) If reinstatement of the Leased Area does not commence within six (6) months or has not been completed within twelve (12) months, either Party may elect to either party may elect to cancel by notice in writing to the other within sixty (60) days after the event and terminate this lease. The Term will terminate upon such notice being given and the Lessee must vacate the Leased Area and surrender the Leased Area to the Lessor, and such termination will be without prejudice to the Lessee up to the date of termination.

16. Option to renew

If the Lessee at least six (6) months, but not earlier than twelve (12) 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 :
 - (a) the payment of Amounts Payable; or
 - (b) 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 and on such other terms and conditions as the Lessor may consider appropriate.

17. Holding over

- (1) If the Lessee remains in possession of the Leased Area 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 Leased Area as a monthly tenant.
- (2) In the event the Lessee is permitted to hold over the Leased Area pursuant to **clause 17.1** the Lessee is obliged during any holding over period to pay any Amounts Payable under this Lease as if the holding over was included in the Term.
- (3) Either the Lessor or the Lessee may give Notice to the other, at any time, to terminate the monthly tenancy and termination will take effect one (1) month after the date of Service of that Notice.

18. Obligation on Termination

18.1 Yielding up

On the expiration of the Term or within one (1) month after the earlier determination of this Lease, the Lessee must:

- (a) surrender peaceably and yield up the Leased Area to the Lessor:
 - (a) clean;
 - (b) free from rubbish, debris and other material; and
 - (c) in a state of repair and condition,

consistent with the performance by the Lessee of the Lessee's Obligations, fair wear and tear excluded, under this Lease and give to the Lessor all keys and security devices and combinations for locks providing access to or within the Leased Area held by the Lessee whether or not provided by the Lessor;

- (b) remove all property of the Lessee including the Lessee's signs, fittings, plant, equipment, building and other articles upon the Leased Area in the nature of trade or tenant's fixtures brought upon the Leased Area by the Lessee (except for any fixtures, fittings or any other

property which are an integral part of or relate to services on the Leased Area, unless otherwise required by the Lessor) (**Lessee's Property**);

- (c) promptly make good to the reasonable satisfaction of the Lessor any damage caused by the removal of the Lessee's Property in accordance with **clause 18.1(b)** ; and
- (d) unless agreed to by the Lessor that any building, signs, fittings, plant, equipment and other articles upon the Leased Area in the nature of trade or tenant's fixtures brought upon the Leased Area by the Lessee can remain at no cost to the Lessee.

18.2 Lessor can remove Lessee's property on re-Entry

- (a) On re-entry the Lessor will have the right to remove from the Leased Area the Lessee's Property (remaining on the Leased Area or Land) and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing the Lessee's Property.
- (b) The Lessor may, at any time after the expiration or sooner determination of the Term, give the Lessee a Notice (**Abandonment Notice**) requiring the Lessee to remove all Lessee's Property not previously removed by the Lessee in accordance with the requirement of this clause (**Remaining Items**).
- (c) On the Lessee's receipt of an Abandonment Notice, the Lessee shall have TWENTY (20) days within which to remove all Remaining Items and failing removal within that TWENTY (20) day period, all Remaining Items still on the Land or in the Lessor's custody shall be deemed absolutely abandoned by the Lessee and shall automatically become the absolute property of the Lessor and may be sold by the Lessor or disposed of at any time and without further notice or obligation to the Lessee. The Lessor shall be entitled to keep the proceeds of any sales and those proceeds shall not be taken into account to reduce any arrears, damages or other moneys for which the Lessee may be liable.

18.3 Obligations to continue

The Parties' rights and obligations under this **clause 18** will continue, notwithstanding the Termination of this Lease.

19. Assignment, sub-letting and charging

19.1 No Assignment

The rights in this Lease are personal to the Lessee, and Lessee may not transfer, assign, mortgage, charge, assign or otherwise part with possession or any way dispose of any of its rights or obligations under this Lease.

19.2 No Subletting without the Lessor's consent

The Lessee must not sublet the Leased Area, without the prior written consent of the Lessor which may be withheld in the Lessor's absolute discretion or may be subject to any conditions the Lessor's deems appropriate.

19.3 Property Law Act 1969

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

19.4 No mortgage or charge

The Lessee must not mortgage nor charge the Land.

20. Provision of information

20.1 Provision of information

The Lessee agrees to provide to the Lessor:

- (a) advice of any changes in its office holders during the Term; and
- (b) any other information on the Lessee reasonably required by the Lessor

21. Disputes

- (1) Until the Parties have complied with this **clause 21**, a Party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory or equitable relief from a court.
- (2) Subject to **clause 21(6)**, where any dispute arises between the Parties under or in association with this Lease (**Dispute**), a Party may give notice in writing of the dispute to the other Party's representative setting out the material particulars of the Dispute (**Dispute Notice**). Within twenty (20) days of receipt of the Dispute Notice, the appointed representative from each Party shall convene a meeting and act in good faith to try to resolve the dispute quickly.
- (3) If the Parties have not:
 - (a) resolved the Dispute; or
 - (b) agreed to an alternative method of resolving the Dispute,within fourteen (14) days after the Dispute meeting referred to in **clause 21(2)**, either Party may submit the Dispute to mediation.
- (4) If the Dispute is submitted to mediation and the Parties do not, within fourteen (14) days (or any longer period the Parties agree) thereafter, agree on:
 - (a) a mediator and the mediator's compensation;
 - (b) the procedure for the mediation; or
 - (c) the timetable of each step of the procedure,the mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines in force at the time that the dispute is referred.
- (5) If a dispute is not resolved within thirty (30) days after the Dispute Notice or, where a Party has submitted the Dispute to mediation, sixty (60) days after the Dispute Notice (or any longer period the Parties agree), either Party who has complied with this **clause 21** may end this dispute resolution process and commence court proceedings in relation to the Dispute.
- (6) The Parties acknowledge and agree that this **clause 21** does not affect the Lessor's rights under **clause 14** and is not applicable to an event of default by the Lessee.

22. Caveat

The Lessee nor any person on behalf of the Lessee must not lodge any absolute caveat at Landgate against the certificate of title to the Leased Area.

23. Notice

23.1 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.

23.2 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 23.1(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 23.1(b)**, on the fourth business day following the date of posting of the Notice.

23.3 Signing of notice

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 2015*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

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.

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 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.

24.9 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.

25. Additional terms, covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 8** 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 8** of the Schedule and the remaining provisions of this Lease, the provisions of **Item 8** of the Schedule will prevail to the extent of that inconsistency.

Schedule

Item 1 Land and Leased Area

Land

Reserve 10183 (306 North Wandering Road) Plan - P225100 29202 being the whole of the land comprised in and commonly known as the “Wandering Golf Course”.

Leased Area

That whole Reserve shown outlined in pink on the sketch annexed hereto as **Annexure 1**, comprising of approximately 64.9218 hectares.

Item 2 Term

Ten (10) years commencing on the Commencement Date and expiring on 1 September 2031.

Item 3 Further Term

Ten (10) years commencing on 1 September 2031 and expiring on 1 September 2041.

Item 4 Commencement Date

1 September 2021

Item 5 Rent

\$1 (including GST) per annum payable on each anniversary of the Commencement Date.

Item 6 Permitted Purpose

Golf Course only.

Item 7 Permitted Hours of Use

Twenty four (24) hours, seven (7) days a week all year of the Term and Hours may be varied subject to approval by the Lessor.

Item 8 Additional Terms, Covenants and Conditions

Access along the southern boundary of the lease area for the Wandering Boddington Clay Target Club; and

Access along the southern boundary of the lease area to maintain and service the communication towers located on adjoining properties.

Signing page

EXECUTED by the parties as a Deed

2021

THE COMMON SEAL of the **SHIRE OF WANDERING** is affixed in the presence of :

Chief Executive Officer

Shire President

Belinda Knight

(Print full name)

Ian Turton

(Print full name)

The **WANDERING GOLF CLUB INCORPORATED** has hereunto signed in accordance with its constitution in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office in the Wandering Golf Club Incorporated indicated under his or her name-

Office Holder Sign

Bruce Dowsett

Name:

1210 Noombling Norrine Road, Dwarda
WA 6308

Address:

President

Office Held:

Office Holder Sign

Dawn Dowsett

Name:

1210 Noombling Norrine Road, Dwarda
WA 6308

Address:

Secretary

Office Held:

Annexure 1 - Sketch of Leased Area

