

Lease of a portion of Reserve 24202, Pingrup Golf Club

Shire of Kent

Pingrup Golf Club

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Details

Parties

SHIRE OF KENT

of PO Box 15, Nyabing, Western Australia 6341
(Lessor)

PINGRUP GOLF CLUB

Registration Number A0690034L
of Nyabing-Pingrup Road, Pingrup, Western Australia 6343
(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 the Premises 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 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 this clause);

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer or Council of the Shire of Murray 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;

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

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics;

CPI Review means the Rent review process described in **clause 4.2**;

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;

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

EPA means the Environment Protection Authority of Western Australia;

Further Term means the further term(s) specified in **Item 4** of the Schedule;

Good Repair means good and substantial tenantable 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;

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;

Lessor's Fixtures and Fittings means all fixtures, fittings and equipment installed in or provided to the Premises by the Lessor at the Commencement Date or at any time during the Term, and includes without limitation the items listed in **Annexure 4** (if any);

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 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.

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 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 Rent Review

- (1) Not applicable.

4.3 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) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
 - (b) 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 AND where possible the Lessee shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee; and
 - (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 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 4.3(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

4.4 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.

4.5 Costs

- (1) The Lessee covenants with the Lessor to pay to the Lessor on demand:
- (a) all duty, fines and penalties payable under the *Duties Act* 2008 and other statutory duties or taxes payable on or in connection with this Lease;

- (b) all registration fees in connection with this Lease; and
 - (c) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (2) 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 4.5** or any matter arising out of this Lease.

4.6 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.

4.7 Accrual of amounts payable

Amounts Payable accrue on a daily basis.

5. Insurance

5.1 Public Liability Insurance

The Lessee must effect and maintain with insurers approved by the Lessor in the joint names of the Lessor and the Lessee for their respective rights and interests in the Premises for the time being adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

5.2 Lessor to obtain building insurance

- (1) The Lessor will obtain building insurance for any of its buildings constructed on the Premises and the Lessee will reimburse the Lessor for any premiums, excess or other costs arising therefrom. For the avoidance of doubt, the parties agree:
- (a) that if such premium or cost does not include a separate assessment or identification of the Premises or the Land, the Lessee must pay a proportionate part of such premium or cost determined by the Lessor acting reasonably; and
 - (b) such insurance will include insurance for the full replacement value of such buildings.

5.3 Details and receipts

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

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

5.4 Not to invalidate

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

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

5.5 Report

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

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

5.6 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 Premises.

- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

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,

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

- (d) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
- (e) any work carried out by or on behalf of the Lessee on the Premises;
- (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
- (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (i) 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;
 - (ii) loss of or damage to the Premises or personal property of the Lessee; and
 - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area

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

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

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 or registered proprietor 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 Generally Lessee fully responsible for all repairs, including structural repairs –

- (1) The Lessee will maintain at its own expense the Premises (which for the avoidance of doubt includes the Lessor's fixtures and fittings any structures or buildings constructed on the Premises) in Good Repair including but not limited to any structural parts, plate glass, electrical installations, gas and water pipes and fittings, toilets, sanitary

appliances, air-conditioning units, exhaust fans, drains, septic tanks, leach drains, paths, paving, park or garden furniture, retaining walls, fences and reticulation.

- (2) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall when maintaining, replacing or repairing in or on the Premises:

- (a) any electrical fittings and fixtures;
- (b) any plumbing;
- (c) any air-conditioning fittings and fixtures;
- (d) any gas fittings and fixtures; and
- (e) any painting

use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.

- (3) The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements comprising the Premises, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Premises.

7.2 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 (and any structures or buildings constructed on the Premises).

7.3 Cleaning

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

7.4 Pest control

- (1) 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.

7.5 Lessor's Fixtures and Fittings

The Lessee covenants and agrees that the Lessor's Fixtures and Fittings:

- (a) will remain the property of the Lessor and must not be removed from the Premises at any time; and
- (b) must be present and accounted for at the termination of each twelve month period of the Term.

7.6 Responsibility for Securing the Premises

The Lessee must ensure the Premises, including Lessor's Fixtures and Fittings, are appropriately secured at all times.

7.7 Maintain surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings including but not limited to any flora, gardens lawns, shrubs, hedges and trees.
- (2) The Lessee must comply with and implement any landscaping, reticulation and similar plans approved by the Lessor (in its capacity as responsible local authority) pursuant to any condition or conditions of development approval for the Premises.
- (3) The Lessee must care for such trees on the Premises as the Lessor may from time to time reasonably require.
- (4) Unless permitted to do so under a development approval, the Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

7.8 Comply with Maintenance Schedule

- (1) The Lessee shall comply with the Lessee's maintenance obligations as set out in the Maintenance Schedule annexed as **Annexure 3**.
- (2) The Lessor shall use reasonable endeavours, subject to any budgetary and resourcing constraints, to comply with the Lessor's maintenance obligations as set out in the Maintenance Schedule annexed as **Annexure 3**.

7.9 Acknowledgement of state of repair of Premises

- (1) The Lessee accepts the Premises in its present condition relying upon its own enquiries and investigations.
- (2) The Lessor does not expressly or impliedly warrant that the Premises is or will remain suitable or adequate for all or any of the purposes of the Lessee or for the business which the Lessee is authorised to conduct thereon and to the extent permitted by law, all warranties (if any) as to suitability and adequacy of the Premises implied by law are hereby expressly negated.

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 Shire planning scheme of the Lessee;
 - (b) install any new signage;
 - (c) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises;

- (d) remove alter or add to any fixtures, fittings or facilities in or on the Premises; or
 - (e) subject to the performance of the Lessee's obligations in **clause 7**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.
- (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
- (a) (ii) use the Premises for any purpose which is not permitted under any local 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 without prior written approval of the Lessor;
- (e) do any act or thing which might result in excessive stress or harm to any part of the Premises;
- (f) display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor;
- (g) to use or allow the Premises to be used for the consumption of alcohol without first obtaining the written consent of the Lessor; or
- (h) use the Premises as the residence or sleeping place of any person or for auction sales without prior written approval of the Lessor.

9.2 Sale of Alcohol

The Lessee must not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988*, *Health (Food Hygiene) Regulations 1993*, *Liquor Licensing Regulations 1989* and any other relevant written laws that may be in force from time to time.

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 statute 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.

9.5 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs 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 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 in **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 work 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 specified at **clause 9**;
- (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 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 *Work Health and Safety Act 2020*, 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 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 or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;
- (b) any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

13. Default

13.1 Events of Default

A default occurs if:

- (a) the Lessee is in breach of any of the Lessee's Covenants for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) the association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the *Associations Incorporation Act 2015* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated, 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 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) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 15**,

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 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.

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 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.

13.5 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), **17** (No Assignment or charging, limited right to sublet) and **22** (Goods and Services Tax) are essential terms of this Lease but this clause **13.5** 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 covenants with the Lessor that if the Term is determined:
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by effluxion of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;
- (d) the Lessee agrees that the covenant set out in this **clause 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 effluxion of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

14. 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 and on such other terms and conditions as the Lessor may consider appropriate.

15. 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.

16. Obligation on Termination

16.1 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.

16.2 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 and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

16.3 Remove property prior to termination

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

16.4 Lessor can remove property on re-entry

- (1) On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property.
- (2) 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 fittings, plant, equipment or other articles not previously removed by the Lessee in accordance with the requirement of this clause (**Remaining Items**). On the Lessee's receipt of an Abandonment Notice, the Lessee shall have TWO (2) days within which to remove all Remaining Items and failing removal within that TWO (2) day period, all Remaining Items still on the Premises 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.

16.5 Clause to survive termination

The Lessee's obligations under this clause shall survive Termination.

16.6 Right to terminate upon notice

Notwithstanding any other provision of this Lease, the parties agree either party may terminate this Lease for any reason upon 90 days' written notice to the other party. If this Lease is terminated in accordance with this clause, the Lessee must comply with its obligations set out in this clause.

17. Assignment, subletting and charging

17.1 No assignment without consent

The rights in this Lease are personal to the Lessee, and Lessee must not in any circumstances assign this Lease without prior written consent of the Minister for Lands and the Lessor which may be withheld in the Lessor's absolute discretion and may be given on conditions acceptable to the Lessor.

17.2 Sub-letting with Lessor's consent

Subject always to **clause 17.1**, the Lessee may not sublet or otherwise part with possession or any way dispose of any of its rights or obligations under this Lease without the prior written consent of the Minister for Lands and the Lessor, and the Lessor's consent may be withheld for any reason whatsoever in the Lessor's absolute discretion.

17.3 No Mortgage or Charge

The Lessee must not mortgage or charge the Premises.

17.4 Property Law Act 1969

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

18. Provision of information

18.1 Provision of information

The Lessee agrees to provide to the Lessor:

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders during the Term; and
- (c) any other information on the Lessee reasonably required by the Lessor

18.2 Prior notice of proposal to change rules

The Lessee agrees that it will not change its rules of association under the *Associations Incorporations Act 2015* without notifying the Lessor of its intention to make such a

change prior to consideration of the required special resolution.

19. Damage or Destruction

If the Premises are at any time during the Term destroyed or damaged to an extent as to be unfit for the occupation and use of the Lessee, either party may give 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 premises 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.

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 officer 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 a senior representative of the Lessee for the purpose of resolving the dispute.

20.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 20.2** of this Lease then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 2012* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

20.4 Payment of Amounts Payable to Date of Award

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

21. 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 Premises.

22. Goods and services tax

22.1 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.

22.2 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 22.1(b)**.

22.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to **clause 22.2** the Lessor shall in the month in which 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.

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 or their delegate;
- (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 0 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 0 of the Schedule and the remaining provisions of this Lease, the provisions of 0 of the Schedule will prevail to the extent of that inconsistency.

Schedule

Item 1 Land

A portion of Reserve 24202, as provided in annexure 1.

Item 2 Premises

The whole of the Land together with all buildings, structures, alterations, additions and improvements on the Land or erected on the Land during the Term.

Item 3 Term

Twenty One (21) years commencing on 01/04/2025 and expiring on 31/03/2046.

Item 4 Further Term

Not applicable

Item 5 Commencement Date

01/04/2025

Item 6 Rent

\$1 plus GST per annum, payable annually in advance with the first payment due on the Commencement Date.

Item 7 Permitted Purpose

Recreation and uses reasonably ancillary thereto.

Item 8 Public Liability Insurance

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

Item 9 Additional terms and conditions

Work Health and Safety Act 2020 compliance

In order for the Lessor to comply with its requirements under the *Work Health and Safety Act 2020* and its subsidiary legislation, any contractor that the Lessee proposes to use in connection with its maintenance obligations under Clause 8 and 9 and Annexure 3 of this Lease or any other works, must register with the Lessor by:

- Providing certificates of currency for insurance, qualifications, licenses or any other document that the lessor requires;
- Undertaking any site or other inductions that the Lessor requires; and
- Do anything else that is reasonably required to ensure compliance with the *Work Health and Safety Act 2020* or its subsidiary legislation.

DRAFT

Signing page

EXECUTED by the parties as a Deed

202

The **COMMON SEAL** of the **SHIRE OF KENT**
is affixed in the presence of -

Signature of Shire President

Full name of Shire President

Signature of Chief Executive Officer

Full name of Chief Executive Officer

THE COMMON SEAL of Pingrup Golf Club was
hereunto affixed pursuant to the constitution of
the Lessee in the presence of each of the
undersigned each of whom hereby declares by
the execution of this document that he or she
holds the office in the Lessee indicated under his
or her name-

Office Holder Sign

Office Holder Sign

Name:

Name:

Address:

Address:

Office Held:

Office Held:

Annexure 1 – Sketch of Premises

Insert a sketch of the premises if the premises is a portion of a Lot. The sketch should clearly show the extent of the premises to avoid any future disputes. If the premises is the whole of a lot, a sketch will not be required and this annexure can be deleted and the remaining annexures (including any references within the body of the Lease) can be renumbered]

To be inserted

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Annexure 2 – Minister for Lands' consent

[Insert Minister for Lands' consent letter for Reserve/Crown Land. Consent should be obtained, through the Department of Planning, Lands and Heritage prior to signing of the Lease. If the land is owned by the Shire in fee simple this annexure can be deleted and the remaining annexures (including any references within the body of the Lease) can be renumbered]

To be inserted

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