

B E T W E E N

SHIRE OF KOJONUP

"the Lessor"

A N D

KOJONUP GOLF CLUB INC

"the Lessee"

*** LEASE AGREEMENT ***

Based on the original lease document
supplied by:

MICHAEL ROGERS & ASSOCIATES

Barristers & Solicitors,

"Barber House"

16 Mead Street,

KALAMUNDA WA 6076

Tel: (08) 9293 4399

ALSO

103 Albany Highway,

KOJONUP WA 6395

Tel: (08) 98311 328

Ref: MJR/SHI/8441

THIS LEASE AGREEMENT is made the day of 2019

B E T W E E N

SHIRE OF KOJONUP, a body corporate constituted under the provisions of the *Local Government Act 1995* of the State of Western Australia having its principal office at 93 Albany Highway Kojonup in the said State (hereinafter called the Lessor) of the one part

A N D

KOJONUP GOLF CLUB INC of Kojonup (hereinafter called the Lessee) of the other part

W H E R E A S

- A. Pursuant to the provisions of the *Land Administration Act 1997* Crown Reserve No. 16076 is vested in the Lessor in trust for recreational use with power to the Lessor to lease the same or any part thereof for any period of TWENTY ONE (21) years or less from the date of the Lease subject nevertheless to the approval in writing of the Minister for Lands.
- B. By Indenture of Lease dated 1st September 1979 the Lessor leased to the Lessee a portion of Reserve No 16076 as depicted on the diagram contained in the Second Schedule of the said Lease for a period commencing 1st September 1979 and terminating on the 31st January 1992.
- C. The Lessee has remained in occupation of portion of Reserve No 16076 from the date of expiry of the

lease dated 1st September 1979 up to and including the present date.

- D. The Lessor has constructed a total of EIGHT (8) tennis courts near the entrance road to the Kojonup Golf Club premises for use inter alia by members of the Kojonup Tennis Club Inc.
- E. The parties have agreed that the Lessor will subject to the consent of the Minister of Lands lease to the Lessee the area of land currently occupied by the Lessee excluding the Tennis Court area.

OPERATIVE PART

1. CONDITION PRECEDENT

This agreement shall be conditional upon the approval of the Minister of Lands being obtained within NINETY (90) days of date of signing of this Lease Agreement.

2. INTERPRETATION

In construing this Lease unless inconsistent with the contents or subject matter the following expression shall bear the meaning set out hereunder: -

- (a) the "Lessor" means and includes the Lessor and its successors and assigns;
- (b) the "Lessee" means and includes the Lessee and its successors and assigns;
- (c) "Schedule" means the Schedule to this Lease;
- (d) "Improvements" means the buildings, improvements, fixtures and fittings on or forming part of the Leased premises including the Club House and Sheds;

- (e) "Land" means the Land described in Item 1 of the Schedule hereto and that may be subject to future boundary re-alignment during the term of this Lease;
- (f) "Leased Premises" means and includes the Land and the improvements;
- (g) "Term" means and includes the term of this Lease referred to in Clause 4 and any extension or renewal thereof.

3. LEASE OF PREMISES

The Lessor leases to the Lessee which agrees to take on lease the Leased Premises.

4. TERM OF LEASE

The term of the lease shall be for a period of TWENTY ONE (21) years commencing and terminating on the dates referred to in Item 2 of the Schedule hereto.

5. RENTAL

The rental payable by the Lessee to the Lessor shall be the amount specified in Item 3 of the Schedule hereto which will be paid in the manner also specified in Item 3 of the Schedule.

6. LESSEE'S OBLIGATIONS

The Lessee warrants and undertakes to the Lessor:-

- (a) to pay the rent hereinbefore reserved at the times and in the manner hereinbefore mentioned without any deduction whatsoever;
- (b) to bear pay and discharge all existing and future rates taxes charges assessments and impositions imposed on or payable by the owner or occupier of the Leased premises in respect thereof;
- (c) to provide and maintain at all times the electrical sanitary and water supply services

and to pay punctually for all electricity and water used by the Lessee on the Leased Premises;

- (d) save as otherwise provided in this Lease in relation to the use of the Club House facilities and the entrance road by members of the Kojonup Tennis Club and guests and invitees to use the Leased Premises as a golf course and for members social activities and not to use or suffer the same to be used for any other purpose whatsoever without the previous consent in writing of the Lessor first had and obtained;
- (e) to maintain and improve the condition of the golf course and to comply with and obey the provisions of all statutes applicable to the use of the Leased Premises;
- (f) not without the previous consent in writing of the Lessor first had and obtained to erect or suffer to be erected any building on the Leased Premises or to make or suffer to be made any alterations to the improvements on the Leased Premises;
- (g) not to alter the character or interfere with the present state of the Leased Premises except as may be necessary for laying out and maintaining the same as a golf course;
- (h) not without the previous consent in writing of the Chief Executive Officer of the Lessor cut down any living trees or sell remove or otherwise dispose of any clay, gravel, timber or other materials from the Leased Premises;
- (i) to keep and maintain the Leased Premises and all buildings and other improvements thereon and all fences and gates in good and tenantable repair order and condition and properly cleansed and to the satisfaction of the Lessor

and to maintain the same and uphold in good order and condition and keep in proper playing order all golfing facilities constructed upon the said land;

- (j) to comply with and obey all lawful and valid regulations notices requisitions and orders which may be made or given with respect to the Leased Premises or the use or occupancy thereof under the provisions of the *Health Act 2016*, *Local Government Act 1995*, *Country Areas Water Supply Act 1947* or any Act or Acts amending the same or any other Statute order regulation or by-law now or hereafter in force PROVIDED THAT the Lessee shall not be liable to effect any structural alterations or additions in pursuance of any order or regulation made under any Act or Statute unless such structural alterations or additions as the case may be are in any way occasioned by the failure of the Lessee to observe or perform any stipulation herein contained or implied.
- (k) to insure and keep insured all insurable buildings on the Leased Premises in their full insurable value against loss or damage by fire storm tempest acts or vandalism and other damage in the joint names of the parties hereto and to pay all premiums and stamp duties in respect thereof;
- (1) to take out and maintain a Public Risk Policy with an Insurance office to be approved by the Lessor in the joint names of the parties hereto for the purpose of indemnifying the parties against any public risk to an amount of at least **TEN** MILLION DOLLARS (\$**10**,000,000.00) and whenever required so to do to produce to the Lessor the policy or policies of such insurance

and punctually pay all premiums and stamp duties in respect thereof;

- (ii) to the extent to which the same shall not be covered by insurance as aforesaid to indemnify and keep indemnified the Lessor against all actions claims costs and demands arising out of or in connection with the use of the Leased Premises together with all expenses incurred by the Lessor in resisting or defending any such actions claims or demands;
- (iii) not to permit any unseemly or riotous conduct in or about the Leased Premises nor do or suffer to be done any act matter or thing in or upon the Leased Premises which may be or become a nuisance annoyance or cause of damage to the Lessor or which may be deemed to be a nuisance by any local or public authority or within the meaning of any Act State or Federal now or hereafter in force and/or any regulation or by-law thereunder and in particular and without in any way limiting the generality of the foregoing provisions not to cause suffer or permit to escape or arise from the Leased Premises any undue noise vibration smells odours or substances which may be or become a nuisance cause of damage or source of annoyance to the Lessor or the owner of any property in the neighbourhood and to forthwith abate and remedy any such nuisance or alleged nuisance;
- (iv) from time to time and at all times during the said term to keep and maintain the grounds lawn rose trees and gardens surrounding the Club House in good order and ornamental condition including the cutting pruning and watering thereof;
- (v) to paint or colour the inside of the Club House erected on the Leased Premises as often as may be reasonably required by the Lessor and with

such colours and materials as may be approved by the Lessor in writing;

- (q) to permit the Lessor and its Chief Executive Officer, Engineer, Architect and contractors with or without workmen and others at all reasonable times to enter upon the Leased Premises and view the conditions thereof and upon notice being given by the Lessor to repair in accordance therewith;
- (r) to permit the Lessor its Chief Executive Officer, Engineer, Architect, Contractors and their servants and agents with all necessary plant and materials at all times to have access to the Leased Premises and the right to remain thereon to carry out any alterations improvements or work whether structural or otherwise which the Lessor may be required or desire to effect to the Leased Premises;
- (s) to repair and make good the Leased Premises or any building or structure thereon in accordance with notices received from the Lessor and in accordance with the covenants herein contained;
- (t) to undertake all work required to be done by the Lessee in pursuance with this Lease under the supervision and to the satisfaction of the Chief Executive Officer or Engineer of the Lessor and in the event of any dispute the Certificate of the Chief Executive Officer or Engineer shall be final;
- (u) not to transfer assign sublet or part with possession of the Leased Premises or any part thereof without the consent in writing of the Minister for Lands and the Lessor first had and obtained which consent the Lessor shall have an absolute right to withhold or refuse any rule of law or in equity to

the contrary notwithstanding and the provisions of Section 80 of the *Property Law Act 1969* are hereby expressly excluded;

- (v) in the event of the Lessee being entitled to remove all or any buildings or structures erected on the Leased Premises to pull down and remove the same in a workmanlike manner so as not to cause any damage to the Leased Premises and forthwith after such removal to restore the sites thereof so far as possible to the present condition thereof;
- (w) at the expiration or sooner determination of the said term to peaceably and quietly yield up the Leased Premises in such state of repair order and condition as shall be consistent with the proper observance and performance by the Lessee of the covenants hereinbefore contained in that behalf;
- (x) to pay all costs charges stamp duties and expenses paid and incurred by the Lessor in and about the negotiations preparation execution and stamping of these presents and also in and about the execution by the Lessor of any act hereinbefore by the Lessee agreed or covenanted to be performed and to include the costs of and incidental to the preparation and service of any notice under the provisions of Section 81 of the *Property Law Act 1969*;
- (y) permit the use of the Club House and the entrance road on the Leased Premises by members of the Kojonup Tennis Club and their guests and invitees except on Golf playing days or days when functions have been arranged for members of the Lessee and subject to the Kojonup Tennis Club Inc. paying its proportionate share of electricity and other variable outgoings and not damaging the structure or fittings of the Club House.

7. LESSOR'S OBLIGATIONS

The Lessor warrants and undertakes with the Lessee that subject to the rights of the Crown and on the Lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations on its part herein contained the Lessee shall peaceably hold and enjoy the Leased Premises during the said term without any interruption by the Lessor or any person rightfully claiming under or in trust for it.

8. MUTUAL COVENANTS

- (a) If the rent hereby reserved or any part thereof shall at any time be in arrear or unpaid for FOURTEEN (14) days after the same shall have become due whether demanded or not or if the Lessee shall at any time fail or neglect to punctually perform or observe or shall permit or allow any neglect or breach of any agreement herein contained or implied and on the part of the Lessee to be performed and observed or if the Lessee shall cease to exist as a golf club or to use the Leased Premises as a golf club as aforesaid or if the Lessee or other the person in whom for the time being the term hereby created shall be vested shall permit any execution to be levied on the Leased Premises or shall become insolvent or make any assignment for the benefit of or enter into any agreement or make any arrangement with its creditors for liquidation of its debts by composition or otherwise or being a company or other incorporated body shall enter into liquidation whether voluntary or involuntary (other than for the purpose of reconstruction) or if the Lessee or such company or other incorporated body shall suffer its interest in

