



Moreland City Council

LEASE

Moreland City Council



LEASE

Moreland City Council (Council)

and

Coburg Athletic Ground Management
Committee

Property: 1 Outlook Road, Coburg North

Table of Contents

REFERENCE SCHEDULE 1: KEY TERMS	II
1. GRANT OF LEASE	1
2. THINGS THE TENANT MUST DO	1
3. THINGS THE TENANT MUST NOT DO	6
4. THINGS THE COUNCIL MUST DO.....	7
5. MUTUAL COVENANTS	8
6. GENERAL CLAUSES	13
7. GST.....	14
8. DEFINITIONS.....	15
9. INTERPRETATION	17
SCHEDULE 2: LEASE & LICENCE PLAN	19
SCHEDULE 3: MAINTENANCE RESPONSIBILITIES	20
SCHEDULE 4: SPECIAL CONDITIONS	24
PART A - CONDITIONS APPLICABLE TO THE PERMITTED USE	24
SCHEDULE 4: SPECIAL CONDITIONS	25
PART B - TENANT SPECIFIC SPECIAL CONDITIONS	25
1. THINGS THE TENANT MUST DO:	25
2. VARIATIONS TO LEASE:.....	25
3. ATHLETICS RUNNING TRACK & LICENCE AREA:	25
4. KEY PERFORMANCE INDICATORS	26
SCHEDULE 5: CO-OPERATIVE RELATIONSHIP	27
1. BACKGROUND TO GRANT OF LEASE	27
2. TENANT'S RESPONSIBILITIES.....	27
3. COUNCIL'S RESPONSIBILITIES	28
4. ADDITIONAL SIGNAGE	28
5. PERSONAL PROPERTY SECURITIES ACT 2009	28
6. OCCUPATIONAL HEALTH AND SAFETY	30
7. ESSENTIAL SAFETY MEASURES.....	31
SCHEDULE 6: HIRING ARRANGEMENT	32
1. MULTIPLE USE OF PROPERTIES.....	32
2. COUNCIL PRIOR CONSENT TO HIRING ON TERMS.....	32
3. OTHER REQUIREMENT FOR CONSENT	32
4. TENANT'S HIRING ARRANGEMENT	32
5. INCONSISTENCY	33
SCHEDULE 7: TENANT'S PROPERTY	34

REFERENCE SCHEDULE 1: KEY TERMS

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|-----|--------------------------------------|---|
| 1. | DATE OF THIS LEASE: | |
| 2. | TENANT: | Coburg Athletics Ground Management Committee Inc. |
| 3. | PROPERTY: | The area shown on the plan in Schedule 2 being the whole / part of the land contained in certificate of title volume 8573 folio 836 |
| 4. | COMMENCEMENT DATE: | The date of this lease |
| 5. | TERM: | 5 years |
| 6. | FURTHER TERM: | Not applicable |
| 7. | RENT: | \$697.88 plus GST per annum |
| 8. | HOW RENT IS TO BE PAID: | Annually in advance |
| 9. | RENT REVIEW: | On each anniversary of the Commencement Date the Rent will be reviewed in accordance with clause 2.2. |
| 10. | PERMITTED USE: | Athletics and associated social and recreational activities |
| 11. | PUBLIC LIABILITY INSURANCE: | \$20,000,000 in respect of any one occurrence (unlimited aggregate). |
| 12. | RETAIL LEASES ACT | The <i>Retail Leases Act</i> 2003 (Vic) does not apply to this Lease (see clause 5.11) |
| 13. | INTERIM CONDITION REPORT DATE | Annually |

THIS LEASE is made on the date specified in Item 1 of the Reference Schedule

BETWEEN

MORELAND CITY COUNCIL
of 90 Bell Street, Coburg, Victoria

(the Council)

AND

THE TENANT
Specified in Item 2 of the Reference Schedule

(the Tenant)

1. GRANT OF LEASE

1.1 Term

The Council leases the Property to the Tenant for the Term commencing on the Commencement Date on the terms contained in this Lease.

1.2 Holding over

If the Tenant wants to continue to occupy and use the Property beyond the period of this Lease without extending it or entering into a new lease, the Tenant must get the Council's written permission. The Council may give permission subject to conditions. If the Council gives permission, the Tenant will continue to occupy and use the Property on the following basis:

1.2.1 The Tenant will be a monthly tenant at a rent which is one-twelfth of the Rent.

1.2.2 The Council may increase the Rent in accordance with its then current Leasing Policy on 1 month's notice.

1.2.3 The conditions in this Lease continue to apply with any necessary changes.

1.2.4 Either the Council or the Tenant may terminate the tenancy at any time by giving the other 1 month's written notice (which notice may be given to expire at any time).

1.3 Condition Precedent

Where applicable, the grant of this Lease is subject to the Council giving notice of its intention to grant this Lease and resolving to grant this Lease pursuant to the requirements of the *Local Government Act 1989 (Vic)*.

2. THINGS THE TENANT MUST DO

The Tenant must:

2.1 Rent

Pay the Council the Rent set out in Item 7 of the Reference Schedule in the manner set out in Item 8 of the Reference Schedule. The Council is entitled to review or adjust the Rent in accordance with Item 9 of the Reference Schedule.

2.2 CPI adjustment of Rent

2.2.1 In this clause:

2.2.1.1 **CPI** means the Consumer Price Index - All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise in the cost of living in Melbourne, as the Council reasonably determines;

2.2.1.2 **CPI Adjustment Date** means each anniversary of the Commencement Date;

2.2.1.3 **Current CPI** means the CPI number for the quarter ending immediately prior to the CPI Adjustment Date; and

2.2.1.4 **Previous CPI** means the CPI number for the quarter ending immediately prior to the last date that the Rent was reviewed, adjusted or increased, or the Commencement Date (whichever is the later).

2.2.2 On each CPI Adjustment Date the Rent will be adjusted to an amount equal to the Rent payable immediately prior to the CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

2.3 Rates and Taxes

2.3.1 Pay all Rates and Taxes and other charges levied on the Property or which are assessed as a consequence of the Tenant's use of the Property by the due date for payment.

2.3.2 If the Rates and Taxes are not separately assessed for the Property, pay or reimburse to the Council the proportion of the Rates and Taxes that the area of the Property bears to the total area rated or taxed within 28 days of demand by Council.

2.4 Services

2.4.1 Pay for all services that are used on or supplied to the Property, including electricity, gas, water, sewerage, garbage services and telecommunication services.

2.4.2 If the Property is not separately metered, pay for the Property to be separately metered.

2.4.3 If it is not practical to separately meter the Property, pay to Council upon demand an amount determined by Council as being a reasonable estimate of the Tenant's annual consumption.

2.5 Costs, Charges and Expenses

2.5.1 Pay for everything the Tenant must do under this Lease unless this Lease says otherwise;

2.5.2 If the Tenant requires amendments to the Council's standard Lease conditions, pay one half of the Council's costs of negotiation and preparation of the Lease; and

- 2.5.3 Pay to the Council all reasonable costs and expenses incurred by the Council as a result of a breach of this Lease by the Tenant.

2.6 No Deduction or Right of Set-off

Pay all amounts due under this Lease to the Council without deduction and is not entitled to set off any amount the Council owes it (whether under this Lease or not) against any amount the Tenant owes the Council under this Lease.

2.7 Compliance with Laws

- 2.7.1 Comply at its own expense with all laws and any requirements of any statutory authority in connection with this Lease, the Property and the Permitted Use.
- 2.7.2 Maintain and comply with all licences, permits and approvals required for the Permitted Use and provide copies to Council upon request. Without limiting the generality of this clause, a breach of any planning permit condition is deemed to be a default of this Lease.
- 2.7.3 Ensure that the Tenant's policies and practices in respect of hiring and retention of its employees, its dealings with its customers, licensees and any other persons on the Property, and its operations from the Property comply with applicable state and federal legislation, including the *Equal Opportunity Act 2010* (Vic).
- 2.7.4 Ensure that all activities conducted from the Property comply with the noise guidelines contained in the *Environment Protection (Residential Noise) Regulations 1997* (Vic).

2.8 Entry to Inspect and/or Carry Out Works

- 2.8.1 Allow the Council to enter the Property for the purposes of inspection or carrying out any maintenance, repairs or other works, provided the Council gives the Tenant reasonable notice.
- 2.8.2 Allow the Council to enter without notice at any time in the case of an emergency at the Property.

2.9 Entry for Emergency

Allow the Council to enter and use the Property at any time without notice in the case of an emergency as defined in the Council's Municipal Emergency Strategy (as amended from time to time) and to remain in the Property for the duration of the emergency.

2.10 Repairs and Maintenance

- 2.10.1 Keep the Property and everything in it clean, tidy and free from pests at the Tenant's own cost.
- 2.10.2 Keep the Property and Council's Fittings in good repair to Council's reasonable satisfaction having regard to their condition at the Commencement Date. This excludes:
- 2.10.2.1 Fair wear and tear; and

2.10.2.2 Damage caused by the Council or any employee, agent or contractor of the Council.

2.10.3 Undertake all repairs and maintenance listed in the column headed 'Tenant' in the Maintenance Responsibilities set out in Schedule 3.

2.11 Notice to do Works

2.11.1 If the Council issues the Tenant with a written notice to undertake maintenance or repairs that are the responsibility of the Tenant, undertake such works within 14 days.

2.11.2 If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 14 days of receiving written notice from the Council and to the satisfaction of the Council, the Council may enter the Property to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to the Council on demand.

2.12 Alterations

2.12.1 Obtain the Council's prior written consent before undertaking any alterations or works on the Property and comply with all reasonable directions given by the Council in carrying out any such alterations or works. Any alterations or works must be done in a proper and workmanlike manner and to the Council's reasonable satisfaction.

2.12.2 Send to Council a copy of any application for funding from any body, organisation or government department for or in relation to any structural works or alterations to the Property.

2.13 Notice of Damage or Required Repairs

2.13.1 Promptly advise the Council:

2.13.1.1 of any repairs, maintenance or works required to the Property for which the Council is responsible under this Lease; and

2.13.1.2 of any damage to the Property or if the Tenant becomes aware of anything likely to be a risk to the Property or any person in the Property.

2.13.2 Provide this advice in writing if requested by the Council.

2.14 Release and Indemnity

2.14.1 The Tenant uses and occupies the Property at its own risk and releases the Council from all claims resulting from any damage, loss, death or injury in connection with the Property except to the extent that such claims arise out of the Council's negligence.

2.14.2 The Tenant must indemnify and hold harmless the Council against all claims resulting from any damage, loss, death or injury in connection with the Property and the use and occupation of the Property by the Tenant except to the extent that such claims arise out of the Council's negligence.

- 2.14.3 The Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:
- 2.14.3.1 any damage to the Property;
 - 2.14.3.2 the failure of the Council's Fixtures or any plant and equipment (including air conditioning and escalators) to operate properly;
 - 2.14.3.3 the interruption or damage to any services (including electricity, gas, drainage, sewerage or water) to the Property; and
 - 2.14.3.4 the overflow or leakage of water in the Property.
- 2.14.4 The Tenant acknowledges and agrees that the Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of the Council undertaken in any capacity including (but not limited to) in exercising any powers under the *Local Government Act 1989 (Vic)* or the *Planning and Environment Act 1987 (Vic)* except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Property.

2.15 Heavy Equipment and Hazardous Substances

- 2.15.1 Not bring any chemical or hazardous substance or heavy equipment onto the Property other than those that are reasonably required for the Permitted Use.
- 2.15.2 Store and handle any chemical or hazardous substances permitted under this Lease on the Property responsibly and at its own risk.
- 2.15.3 Obtain the prior written permission from the Council to bring onto the Property heavy equipment or chemical or hazardous substances required to be used by the Tenant in undertaking any repairs, maintenance or other works required under this Lease.

2.16 Permitted Use

- 2.16.1 Only use the Property for the Permitted Use. The Tenant must not use it for any other purpose.
- 2.16.2 The Tenant occupies and uses the Property at its own risk. The Council makes no promise or representation that the Property is fit for the Tenant's purposes.
- 2.16.3 The Tenant must do everything necessary for the Tenant to use the Property lawfully.

2.17 Hire of Property

Only hire out the Property or part of the Property in accordance with the Hiring Arrangement contained in Schedule 6. The Hiring Arrangement may be varied from time to time by Council.

2.18 Keys

- 2.18.1 Ensure the Property remains accessible, via at least one door to the main building and one gate through a perimeter fence, using Council's master key set.
- 2.18.2 Other doors may remain on the Tenant's key set provided they can be unlocked without a key from the inside.
- 2.18.3 At the commencement of this Lease, Council will provide the Tenant with up to:
 - 2.18.3.1 2 locks to external doors to the primary building;
 - 2.18.3.2 1 padlock to any external gate; and
 - 2.18.3.3 6 keys.
- 2.18.4 Any additional keys and locks will be provided by Council at the Tenant's cost.
- 2.18.5 At the end of this Lease, the Tenant must give to the Council all keys and other security devices for the purpose of obtaining access to the Property.

2.19 Obligation in relation to Tenant's Agents

Make sure that the Tenant's Agents and all other people on the Property do not do or fail to do anything on the Property which, if the Tenant did it or failed to do it, would be a breach of this Lease.

2.20 Security

Ensure that the Property is secure when it is not being used by the Tenant.

2.21 Reporting Requirements

Give to the Council:

- 2.21.1 within 60 days of the end of each financial year or the Tenant's reporting period or Annual General Meeting an audited financial report, including a statement of assets and liabilities and profit and loss statement for the Tenant for that financial year; and
- 2.21.2 within 60 days of the Tenant's annual general meeting, a copy of:
 - 2.21.2.1 the minutes of the meeting; and
 - 2.21.2.2 the office bearers appointed to the Tenant, their contact details, their duties and the length of term of the office of each office bearer.

3. THINGS THE TENANT MUST NOT DO

The Tenant must not:

3.1 Not Abandon Property

Without the prior written consent of the Council, abandon or leave the Property unoccupied for a consecutive period of 10 days (excepting seasonal holidays).

3.2 Signs

Without the Council's prior written consent display or affix any commercial advertising or sponsorship signs or notices on any part of the exterior of the Property. Council may give its consent with or without conditions.

3.3 Council's Fittings

Alter Council's Fittings or remove them from the Property without the Council's prior written consent.

3.4 Liquor and Gaming Licences

3.4.1 Apply for or hold a liquor or gaming licence without the prior written consent of Council.

3.4.2 If Council consents to the Tenant applying for a liquor or gaming licence, Council has the right to review the Rent as a condition of providing such consent.

3.5 Nuisance

Do anything in connection with the Property that may cause a nuisance or interfere with any other person.

3.6 Pollution

Cause any pollution or create any environmental hazard on the Property. If it does so, it must remove it and clean it up to the satisfaction of the Council and any relevant authority.

3.7 Smoking

Allow smoking in any building or within 5 meters of access points to buildings such as doors, windows, air-conditioning vents and ducts unless action has been undertaken to block the windows/vents from incoming smoke.

4. THINGS THE COUNCIL MUST DO

The Council must:

4.1 Not Disturb the Tenant

Not interfere with or unduly disturb the Tenant, except where permitted by this Lease, or unless the Tenant breaches this Lease.

4.2 Repair and Maintenance

Undertake all repairs and maintenance listed in the column headed 'Council' in the Maintenance Responsibilities set out in Schedule 3.

5. MUTUAL COVENANTS

The Council and the Tenant both agree as follows:

5.1 Assignment

- 5.1.1 The Tenant must not without the prior written consent of the Council, assign, sub-lease, or give up possession of this Lease or the Property.
- 5.1.2 The proviso contained in section 144(1) of the *Property Law Act 1958 (Vic)* does not apply to this Lease and is expressly excluded.
- 5.1.3 The Council's consent may be given or withheld at the Council's discretion and, if given, be subject to such terms and conditions as the Council may in its absolute discretion determine. This may include an amendment to the terms of this Lease including the Rent payable. Council will assess any application for consent in accordance with its Leasing Policy.

5.2 Insurance

- 5.2.1 The Tenant must arrange and maintain insurance on terms and with an insurer approved by the Council against each of the following:
 - 5.2.1.1 public liability for the amount specified in Item 11 of the Reference Schedule; and
 - 5.2.1.2 damage to and loss of the Tenant's Property.
- 5.2.2 The Council must insure the Property against loss or damage by fire, flood, storm or tempest for its full insurable value.
- 5.2.3 Each party must give the other party a copy of the insurance policy or a certificate of currency in relation to the insurance they are required to maintain under this Lease upon request.
- 5.2.4 The Tenant must not make any insurance effected by the Council invalid or liable to be cancelled.
- 5.2.5 The Tenant must pay the Council for any increase in the cost of any insurance the Council arranges which results from anything the Tenant does or fails to do, or allows to be done or not done.
- 5.2.6 The Tenant must not do or fail to do anything, or allow anything to be done or not done:
 - 5.2.6.1 Which might increase the cost of any insurance the Tenant or Council arranges; or
 - 5.2.6.2 Which might adversely affect the Tenant's or the Council's rights under any insurance the Tenant or the Council arranges.

5.3 Council's Liability

The Council is not liable for any loss or damage to any property, or injury to any person, no matter how it happens, except to the extent the Council or someone the

Council is responsible for causes that damage, loss or injury intentionally or negligently or by a breach of this Lease.

5.4 Defaulting under the Lease

- 5.4.1 Each of the Tenant's obligations to pay money and its obligations under clauses 2.1, 2.3, 2.4, 2.5, 2.7, 2.9, 2.10, 2.14, 2.16, 5.1, 5.2.1 are essential terms of this Lease.
- 5.4.2 The Council may re-enter the Property and terminate this Lease if:
- 5.4.2.1 any part of the Rent is in arrears for 14 days (whether or not the Council has demanded payment); or
 - 5.4.2.2 the Tenant breaches this Lease and does not remedy the breach within 14 days of receipt of written notice from the Council.
- 5.4.3 The Tenant must reimburse the Council for any costs the Council incurs as a result of any breach of this Lease by the Tenant. The Tenant must also pay damages to the Council for any loss the Council suffers as a result of the Tenant's breach and the end of this Lease, including the Council's loss of the benefit of the Tenant performing the Tenant's obligations from the date that it ended until the expiry date.

5.5 Destruction or Damage

- 5.5.1 If the Property is destroyed or damaged and the Tenant cannot use or have access to the Property then the Council may, within 6 months from the date of such damage or destruction, give notice to the Tenant:
- 5.5.1.1 Ending this Lease on a date not less than 14 days after the date the Council gives notice, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
 - 5.5.1.2 that the Council will commence reinstatement of the Property to a condition where the Tenant can use or have access to the Property.
- 5.5.2 If the Council does not make the Property fit for the Tenant's use within a reasonable time after giving the Council's notice, the Tenant may give the Council a notice stating that the Tenant will end this Lease if the Council does not make the Property fit within a reasonable time after the Tenant gives the Tenant's notice.
- 5.5.3 Provided the Tenant has not caused or contributed to the damage or destruction of the Property and the payment of the insurance for the Property is not refused due to the act or default of the Tenant, the Tenant may give written notice to the Council terminating this Lease where the Council does not:
- 5.5.3.1 give notice to the Tenant pursuant to clause 5.5.1; or
 - 5.5.3.2 commence reinstatement within 18 months of the date of damage or destruction.

- 5.5.4 If the Property, or any part of the Property is destroyed or damaged to the extent that the Tenant cannot use or have access to the Property (except if the Tenant causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Property because the Tenant caused or contributed to the destruction or damage) then the Council will reduce the Rent and the outgoings by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the Property. If a dispute arises under this clause about the amount of the Rent or outgoings payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally
- 5.5.5 The Council is not obliged to restore or reinstate the Property.
- 5.5.6 Subject to clause 2.14 neither party may take action against or claim damages or compensation from the other because this Lease is terminated under this clause.
- 5.5.7 The Tenant acknowledges that if the Property is destroyed or damaged, the Tenant is not entitled to receive any compensation from the Council.
- 5.5.8 Upon termination of this Lease, each party is released from all further obligations under this Lease except nothing in this clause releases either party from any breach of this Lease arising prior to the date of termination.

5.6 Early termination

- 5.6.1 The Tenant may terminate this Lease at any time on giving the Council 6 months' written notice that it no longer requires the Property.
- 5.6.2 Upon the expiry of a notice given under this clause:
- 5.6.2.1 this Lease will terminate, without prejudice to any right or liability of either party in relation to any cause of action accruing prior to the termination; and
- 5.6.2.2 if the Tenant has complied with its obligations as to make good under clause 2.10 and clause 5.8, the Council must refund to the Tenant any Rent (calculated on a daily basis) paid in advance of the date of termination.

5.7 Condition Reports

- 5.7.1 The Tenant acknowledges:
- 5.7.1.1 the Council has prepared the Initial Condition Report immediately prior to the Commencement Date; and
- 5.7.1.2 the Initial Condition Report accurately represents the condition and state of repair of the Property at the Commencement Date.
- 5.7.2 The Council and the Tenant agree that the Council will re-inspect the Property and prepare an Interim Condition Report at the date specified in Item 13 of the Reference Schedule.

- 5.7.3 The Council and the Tenant agree that the Council will conduct a final inspection of the Property and prepare a Final Condition Report immediately prior to the end of this Lease.

5.8 End of Lease

- 5.8.1 At the end of this Lease, the Tenant must:
- 5.8.1.1 vacate the Property and give it back to the Council in the same condition and state of repair as it was in at the Commencement Date (fair wear and tear excepted) as evidenced by the Initial Condition Report;
 - 5.8.1.2 remove the Tenant's Property; and
 - 5.8.1.3 make good any damage caused by the removal of the Tenant's Property.
- 5.8.2 The Tenant must make good any damage or state of disrepair that has occurred to the Property since preparation of the Initial Condition Report which is set out in the Final Condition Report, if the Tenant is responsible for that damage or disrepair under clause 2.10.
- 5.8.3 Any fixed improvements made to or installed on the Property (whether paid for by Council or the Tenant) must not be removed and will become the property of the Council at the end of this Lease.
- 5.8.4 Anything left in the Property at the end of this Lease will become the property of the Council and may be removed by the Council at the Tenant's cost.

5.9 Major maintenance or capital works

- 5.9.1 The Tenant may not make any claim for compensation as a result of, or in any way arising from, disturbance caused by the undertaking of any maintenance or works.
- 5.9.2 Despite the delineation of maintenance responsibilities provided in Schedule 3, the Tenant and Council may agree on a contribution to be made by each of them for the cost of major maintenance or works.
- 5.9.3 If the Tenant requires any structural or capital additions to the Property to enable it to use the Property for the Permitted Use, it may undertake such works at its cost if it obtains the prior consent of the Council and complies with clause 2.12.

5.10 Compulsory Acquisition

If any part of the Property is subject to a compulsory acquisition, the Council will have a freehold interest claim.

5.11 Exemption from Retail Leases Act (the Act)

- 5.11.1 The Tenant acknowledges that Council has entered into this Lease on the basis that:

- 5.11.1.1 the annual Rent is less than \$10,000;
- 5.11.1.2 the Tenant is a body or association, whether incorporated or unincorporated that exists for the purposes of providing or promoting community or similar facilities or objectives and that applies its profits in promoting its objects and prohibits the payment of any dividend or amount to its members; and
- 5.11.1.3 accordingly, pursuant to the determination made by the Minister for Small Business under section 5 of the Act on 6 October 2014, the Act does not apply to this Lease.

5.11.2 The Tenant warrants that its constitution or rules of association prohibit payment of any dividend, benefit or other amount to its members.

5.11.3 The Tenant must apply any profits that it receives solely towards the promotion of the Tenant's objects.

5.12 Special Conditions

The terms of this Lease are varied in the manner set out in Schedule 4.

5.13 Co-operative Relationship

The tenant and the Council agree to undertake their respective responsibilities as set out in Schedule 5.

5.14 Alterations to the Property

The Council may carry out any works, alterations, renovation or refurbishment of the Property which may include extending or reducing any buildings on the Property.

5.15 Dealing with Land

The Council may:

5.15.1 subdivide the land on which the Property are located, or grant easements or other rights over that land or the Property, except where it will unreasonably interfere with the Tenant's use and occupation of the Property; and

5.15.2 install, repair and replace pipes, cables and conduits in the Property.

5.16 Entry by Council

The Council may enter the Property at any reasonable time after giving the Tenant reasonable notice to:

5.16.1 inspect the condition of the Property;

5.16.2 rectify any default by the Tenant under this Lease;

5.16.3 carry out any inspection, repairs, maintenance, works or alterations in the Property which the Council decides to or is required to carry out by any law or authority.

The Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Property in exercising the Council's rights under this clause.

5.17 Emergency events

In an emergency the Council may:

- 5.17.1 enter the Property at any time without giving notice to the Tenant;
- 5.17.2 close the Property for such period as the Council reasonably considers necessary; and
- 5.17.3 prevent the Tenant from entering the Property, or require the Tenant to leave and stay out of the Property.

5.18 Council's consent

Unless otherwise provided for in this Lease, where the Council is required to give its consent under this Lease, the Council must not unreasonably withhold its consent but may give its consent subject to such conditions as the Council may reasonably determine.

5.19 No fettering

The Tenant acknowledges and agrees that nothing in this Lease in any way limits, fetters or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the Planning and Environment Act 1987 (Vic) or the Local Government Act 1989 (Vic) or the exercise of any other statutory right, power or duty that Council may lawfully exercise.

5.20 Resumption of Property

If any part of the Property is resumed by any authority and the Property becomes unfit for the Permitted Use, then either the Council or the Tenant may end this Lease by written notice to the other.

6. GENERAL CLAUSES

6.1 Notices

Any notice, consent, information or request that must or may be given under this Lease must be in writing and delivered or posted to:

- 6.1.1 the Tenant at its address set out in this Lease.
- 6.1.2 the Council at its address set out in this Lease.

However, if a party gives the other 3 business days written notice of a change in address, a notice, consent, information or request must be delivered or posted to that address.

6.2 Proper Law

This Lease is governed by the laws of the State of Victoria.

6.3 Severance

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Lease, but the rest of this Lease is not affected.

6.4 Entire Understanding

The terms and conditions contained in this Lease comprise the entire understanding and agreement between the Council and the Tenant and other agreements, promises, or statements (if any) whether express or implied are merged in this Lease and are otherwise excluded and cancelled.

6.5 Waiver

The fact that the Council fails to do, or delays in doing, something the Council is entitled to do under this Lease, does not amount to a waiver of the Council's right to do it, even if it becomes a practice. This includes anything to do with payment or late payment of rent. A waiver by the Council is only effective if it is in writing.

6.6 Dispute Resolution Process

- 6.6.1 In the event of a dispute arising under this Lease, either party may serve upon the other party a notice of dispute in writing specifying the nature of the dispute.
- 6.6.2 An authorised representative of the Tenant and the Council must meet within 21 days of the service of a notice of dispute provided by either party with a view to resolving the dispute.
- 6.6.3 Before taking further action in respect of the dispute, the Council's Director of Corporate Services (or other person nominated by the Council) and the Chief Executive Officer (or an equivalent person) of the Tenant must meet with a view to resolving the dispute.

7. GST

7.1 Definitions

In this clause:

- 7.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 7.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest. If under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000 (Vic)* or a direction given under section 6 of that Act, the supplier makes voluntary or notional payments, the definition of GST includes those voluntary or notional payments and expressions containing the term 'GST' have a corresponding expanded meaning; and

7.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

7.2 **GST exclusive**

Except as otherwise provided by this clause, all consideration payable under this Lease in relation to any supply is exclusive of GST.

7.3 **Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

7.4 **Payment of GST**

Subject to clause 7.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

7.5 **Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 7.4.

7.6 **Reimbursements**

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

7.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

7.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

7.7 **Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Lease:

7.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

7.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

8. **DEFINITIONS**

In this Lease, the following definitions apply:

Commencement Date means the date specified in Item 4 of the Reference Schedule.

Council means the Moreland City Council and its successors at law and where applicable includes the Council's employees, agents and any other

authorised persons.

Council's Fittings includes all those fittings, fixtures, and chattels (excluding the Tenant's chattels) contained in the Property at the Commencement Date or installed by the Council during the Term.

Final Condition Report means a report to be prepared by the Council describing the condition of the Property immediately prior to the end of this Lease.

Further Term means the further term specified in Item 6 of the Reference Schedule.

Initial Condition Report means the report prepared by the Council describing the condition of the Property at the Commencement Date as contained in Schedule 8.

Interim Condition Report means a report to be prepared by the Council describing the condition of the Property at the date specified in Item 13 of the Reference Schedule.

Leasing Policy means the 'Property Leasing Policy' adopted by Council on 8 September 2003, as amended from time to time.

Maintenance Responsibilities means the maintenance schedule as amended from time to time by the Council and as at the date of this Lease contained in Schedule 3.

Permitted Use means the use described in Item 10 of the Reference Schedule.

Property means the property specified in Item 3 of the Reference Schedule including the Council's Fittings.

Rates and Taxes means any amount charged against the Property by any authority.

Reasonable Notice unless otherwise advised of a specific time for the action to be undertaken means the time that would be reasonably required to carry out the various actions required to undertake the works. Notice should be given in writing.

Rent means the amount specified in Item 7 of the Reference Schedule which is subject to rent reviews as detailed in Item 9 of the Reference Schedule.

Schedule means any of the schedules annexed to this Lease.

Taxable Supply means what it means under *A New Tax System (Goods and Services Tax) Act 1999*.

Tenant means the tenant specified in Item 2 of the Reference Schedule, and includes the Tenant's successors and assigns.

Tenant's Agents mean the Tenant's employees, contractors, agents, invitees and other persons the Tenant allows on the Property.

Tenant's Property means the Tenant's chattels, fixtures, fittings together with all items specified in the inventory in Schedule 7.

Term means the Term specified in Item 5 of the Reference Schedule and includes any extension or overholding.

9. INTERPRETATION

In this Lease, unless the contrary appears:

- 9.1 A reference to a person includes a reference to a firm, corporation or other corporate body.
- 9.2 If a party consists of more than one person this Lease binds them jointly and each of them severally.
- 9.3 A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations or delegated legislation made under such statutes.
- 9.4 All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Lease.

EXECUTED by the parties as a deed

SIGNED by, **Olivia Wright Manager Property and Governance** for and on behalf of **MORELAND CITY COUNCIL** in the exercise of a power conferred by an Instrument of Delegation dated 20 January 2017 in the presence of:

)
)
).....

Date.....

.....
Signature of Witness

.....
Name of Witness (Block Letters)

Executed by **Coburg Athletic Ground Management Committee Inc ABN 60 540 833 034** by **authority of the Committee** in accordance with section 38(1) of the *Associations Incorporation Reform Act 2012* by being signed by authorised persons for the incorporated association:

)
)
)
)

.....
Committee member

.....
Committee member (or Secretary)

.....
Full name

.....
Full name

SCHEDULE 2: LEASE & LICENCE PLAN

Lease area shown in blue, Licence area shown in red.



SCHEDULE 3: MAINTENANCE RESPONSIBILITIES

MAINTENANCE SCHEDULE 3

	Tenant	Council	Comments
BUILDING MAINTENANCE			
Structure			
Roof	Maintain	Replace	
Gutter and Spouting	Maintain	Replace	
External and Internal Walls	Maintain	Replace	
Floor	Maintain	Replace	
Stumps, footing etc	Maintain	Replace	
Services			
Electrical wiring		Full Maintenance	
Plumbing (including sewerage)	Maintain	Replace	<i>Tenant will be responsible where they cause blockage</i>
Sub surface drain pipes	Maintain	Replace	<i>Tenant will be responsible where they cause blockage</i>
Drainage service pits	Maintain	Replace	<i>Tenant to keep pit free of debris and inspect regularly.</i>
Fittings			
Air conditioning and/or heating		Full Maintenance	<i>Inspect/service annually</i>
Curtains/ drapes/ blinds	Full Maintenance		
Electrical fittings and lights	Full Maintenance		<i>All power outlets, switches, diffusers, light guards etc.</i>
External Lighting (eg sensor, verandah flood lights)	Full Maintenance		
Plumbing fittings (toilet, sink, taps etc)	Full Maintenance		
Floor surfaces and coverings	Full Maintenance		
Fly screens	Full Maintenance		
Plate glass	Full Maintenance		
Windows	Full Maintenance		
Intercom	Full Maintenance		
Keys and locks	Full Maintenance		<i>Cylinders and keys will be supplied through Council at tenants cost.</i>
Internal wall surfaces (paint, wallpaper etc)	Full Maintenance		<i>Paint on 10 year cycle. Tenant and Council will consult regarding colour.</i>
External wall surfaces	Full Maintenance		<i>Paint on 10 year</i>

(eg Graffiti).			<i>cycle. Tenant and Council will consult regarding colour.</i>
Skylight	Maintain	Replace	
Appurtenant fittings or tenant's fixtures	Full Maintenance		
Doors	Maintain	Replace	
Security system and related fittings	Full Maintenance		
Hot Water System		Full Maintenance	
Fixed whitegoods (eg stove)	Maintain	Replace	
Essential Services			
Fire extinguishers Fire blankets	Replace if inappropriately discharged or stolen	Audit and Report Full Maintenance	<i>Inspect 6 monthly to Australian Standard</i>
Essential Services Signage (ESS)	Alert Council if stolen. Ensure no non-council supplied ESS is fitted.	Audit and Report Full Maintenance	<i>Inspect to Australian Standard as applicable to the ESM.</i>
Smoke & Heat Detectors	Replace battery if stolen and alert Council to failed/low battery beeps. Replace if stolen,	Full Maintenance including Annual Battery Changeover	<i>Inspect 6 monthly to Australian Standard</i>
Paths of Travel to Emergency Exits	Ensure passages are clear of all obstructions (debris, furniture, equipment etc.) and free to exit at all times.	Audit and Report	<i>Inspect 3 monthly to Australian Standard</i>
Discharge from Emergency Exits	Ensure the egress from Exits are clear of all obstructions (bins, vehicles, equipment, etc.) and free to exit at all times.	Audit and Report	<i>Inspect 3 monthly to Australian Standard</i>
Emergency Exits (code compliant hardware in a required exit or path of travel)	Ensure doors are open by the operation of the inside door handle and occupants are free to exit at all times.	Audit and Report Full Maintenance	<i>Inspect 3 monthly to Australian Standard</i>
Emergency Exits (non-complaint hardware in a required exit or path of travel)	Ensure doors are not fitted with chains, padbolts, padlocks, etc.	Audit and Report Removal and make good at cost to Tenant	<i>Inspect 3 monthly to Australian Standard</i>
Fire Hose Reel Fire Hydrants	Alert Council if damaged or missing.	Audit and Report Full Maintenance	<i>Inspect 6 monthly and Annually to Australian Standard</i>

Fire Doors	Ensure doors are not penetrated.	Audit and Report Full Maintenance	<i>Inspect 6 monthly and Annually to Australian Standard</i>
Emergency & Exit Lighting	Alert Council if failed or missing.	Audit and Report Full Maintenance	<i>Inspect 6 monthly to Australian Standard</i>
Building Elements : fire resistance and fire protection	Ensure no works are undertaken without written approval of Council.	Audit and Report Full Maintenance Removal and make good of non-compliance materials at cost to Tenant	<i>Inspect 6 monthly and Annually to Australian Standard</i>
OTHER			
Car park & Driveway	Full Maintenance		<i>Inspect 6 Monthly</i>
Pest Control	Undertake		
Waste removal	Undertake		<i>Weekly</i>
Elements appurtenant to function (eg. sports court, playground, playing fields, electrical wiring and lighting on greens or courts, plumbing and drainage on greens or courts etc.)	Full Maintenance		<i>Quarterly safety inspection to Australian Standard for playgrounds.</i>
Signage	Full Maintenance		
Fences & Gates	Maintain	Replace	<i>Inspect annularly</i>
OPEN SPACE			
Lawns	Full Maintenance		<i>Asses Fortnightly</i>
Paths	Full Maintenance		<i>Asses Fortnightly</i>
Loose litter / leaves	Full Maintenance		<i>Asses Fortnightly</i>
Garden beds	Full Maintenance		<i>Asses Fortnightly</i>
Irrigation	Full Maintenance		
Trees	Maintain	Replace	<i>Council approval to be sought prior to any major tree maintenance</i>
Retaining Walls, Outdoor steps etc.	Maintain	Replace	
Groundwork	Maintain	Replace	

Definitions:

Maintain: Clean, maintain and repair. Keep in good condition. Inspect. Service. Maintain to current Australian Standard. Maintain to current Council standards. (Contact Council for current standards).

Note: Council requests evidence of regular maintenance. This can include photos i.e. before and after, invoices demonstrating services provided eg gutter cleans or roof cleans etc. This required by Council's Insurance Providers.

Replace: Replace with like for like if un-repairable.

Full Maintenance:	Clean, inspect, maintain, repair, replace.
Blank:	No Maintenance
Undertake:	Carry out specified activity

The comments column is provided for the benefit of the tenant. This column may be used to clarify the maintenance responsibilities that relate to a particular site.

The replacement of certain items may be dependent upon budget provisions.

Council reserves the right to request the tenant to carry out any required works which fall under the tenant's responsibility within the maintenance schedule.

Annual Building Audit

A Building Audit will be undertaken annually. The Audit will outline works/maintenance that will be required to be undertaken. The works/maintenance responsibilities are outlined within Schedule 3 Maintenance Responsibilities of the lease as detailed above.

The tenant is to provide a program of works in accordance with Key Performance Indicators detailed in Schedule 4 Special Conditions Part B of the lease within 30 days of the receipt of the Building audit.

SCHEDULE 4: SPECIAL CONDITIONS

PART A - CONDITIONS APPLICABLE TO THE PERMITTED USE

The Tenant must remain affiliated with the state sporting association for the duration of the lease eg. Athletics Victoria and Athletics Australia see: <http://athsvic.org.au/> and <http://athletics.com.au/>

The Tenant must adhere to the Allocation and Use of Sporting Facilities; Grounds and Pavilions Policy. See Council's website at www.moreland.vic.gov.au/about-us/news-and-publications/policies-and-strategies/

The Tenant must adhere to the Allocation and Use of Sporting Facilities; Grounds and Pavilions User Guide. See Council's website at www.moreland.vic.gov.au/about-us/news-and-publications/policies-and-strategies/

The Tenant must register as an Active Moreland Activity Provider at www.activemoreland.com.au/signup. The Active Moreland website provides an advanced search called Find an Activity for members of the community to access information about physical activity opportunities in Moreland.

The Tenant must:

- 1.1 Register as an Active Moreland Activity Provider – activemoreland.com.au/signup
- 1.2 Add 'activities' including training sessions, social sessions, junior development programs, come and try events prior to each season beginning.
- 1.3 Ensure that the club's organisation and contact details reflect any changes that may have occurred since the previous season has ended.
- 1.4 Maintain information throughout the season, should any changes occur.

Active Moreland website support - email active@moreland.vic.gov.au or phone 9240 1111.

LICENCE AGREEMENT FOR TRACK

The Tenant is granted a licence for non-exclusive use of the area shown on the Lease Plan including the Athletics Running Track and Sports Equipment in Schedule 2, page 19.

SCHEDULE 4: SPECIAL CONDITIONS

PART B - TENANT SPECIFIC SPECIAL CONDITIONS

1. THINGS THE TENANT MUST DO:

The Tenant must:

- 1.1 The Tenant must keep a key register that identifies who holds keys for the Property.
- 1.2 The Tenant must advise Council of the access code for any security system at the Property.
- 1.3 The Tenant is responsible for keeping paths of travel to and from emergency exits and all doorways clear and free from obstructions at all times.
- 1.4 The tenant must hold a valid Liquor Licence in line with Council's Policies.
- 1.5 The Tenant must ensure that each group under the Coburg Athletic Ground Management Committee holds their own Public Liability Insurance in accordance with this lease and in addition to the Committee's Public Liability Insurance.
- 1.6 The Tenant must advise Council when they hold any event outside the lease and licence area eg. Cross County event.

2. VARIATIONS TO LEASE:

Non-Applicable

3. ATHLETICS RUNNING TRACK & LICENCE AREA:

- 3.1 The Tenant has non-exclusive licence to use the Running Track and Athletics equipment on the following conditions:
 - 3.1.1 The Tenant maintains and cleans the surface of the Running Track.
 - 3.1.2 The Running Track is available for public use when the committee is not using it.
 - 3.1.3 The Tenant advises the Council on a seasonal basis of their proposed hours of use for the Athletics Facilities.
 - 3.1.4 The Tenant maintains the associated facilities surrounding the Running Track including but not limited to: Shot Put areas, Javelin throwing areas x2, High Jump area, Hammer cage with Discus area and Track Floodlighting.
- 3.2 Council will maintain the garden areas: lawns, trees and garden bed areas.

4. KEY PERFORMANCE INDICATORS

The following Key Performance Indicators (KPI) are reportable to Council annually. A breach in any KPI is deemed a breach of this lease.

KPI: Ensure the outcomes for the local community are met by encouraging active participation to all Moreland residents.
Measure: Annual Report detailing the use of the track and facilities by members for competition and social activities and the use by non-members i.e. the Hiring of the Property.
KPI: Ensure Membership application is open and transparent
Measure: Provide Council with the number of requests for membership, the application process and the number of these applications that become members of the Tenant.
KPI: Ensure participation in the activities of the Property remains affordable to all Moreland and community users.
Measure: Demonstrate that any charges for hire of the Property are comparable with other community facilities for similar use.
KPI: Provide a diverse range of opportunities for the Moreland community to participate with the Coburg Athletics.
Measure: Demonstrate a minimum of three (3) open days for the community. Include copies of the advertisement of the activity.
KPI: Ensure the management of the venue is economically sustainable
Measure: Demonstrate ability to secure income, funding or in kind contributions from various entities other than Council. – Refer to the 5 year Scheduled Maintenance Works Program.
KPI: Develop a 5 year Scheduled Maintenance Works program
Measure: Annual report on programmed works in accordance with the tenants responsibilities outlined in the Maintenance Schedule detailed in Schedule 3 of the lease.
KPI: Develop 5 year Business Plan or Financial Plan or Strategic Plan
Measure: The plan is to be developed and presented to Council within the first 12 months of the lease term. The plan must be in line with Council's Policies detailed in Schedule 4 Special Conditions part A of this lease and must include details of junior and/or female participation.
KPI: Ensure all Conflict / Dispute resolution processes are open and transparent
Measure: Provide Council with the Tenants Grievance Procedure including the Code of Conduct for all members of the Tenant.

SCHEDULE 5: CO-OPERATIVE RELATIONSHIP

1. BACKGROUND TO GRANT OF LEASE

- 1.1 The Council has agreed to grant this Lease to the Tenant on a subsidised basis pursuant to its Leasing Policy. The rent subsidy provided to the Tenant and the level of maintenance required to be undertaken to the Property by the Tenant have been determined in the manner set out in this Lease as a result of the services undertaken by the Tenant, both directly and indirectly, and the positive contribution these services make to the Moreland community.

2. TENANT'S RESPONSIBILITIES

In consideration of the grant of this Lease on its terms, and in recognition of the subsidy provided, the Tenant agrees as follows:

- 2.1 The Tenant must not amend its rules of incorporation or its constitution without the prior written consent of the Council.
- 2.2 The Tenant will operate in accordance with its rules of incorporation or its constitution.
- 2.3 The Tenant will not apply to amend or cancel any licence or permit that is required for it to carry out the Permitted Use without the prior written consent of Council.
- 2.4 The Tenant will permit residents and ratepayers of the municipality to become members of the Tenant upon satisfying the Tenant's reasonable requirements for membership.
- 2.5 The Tenant will, upon demand, inform the Council of the number of members of the Tenant and will provide documentation to verify its membership.
- 2.6 The Tenant must not undertake any activity or permit anything to be done which may cause it to cease being exempt from Commonwealth income tax under the *Income Tax Assessment Act 1997* (Cth).
- 2.7 The Tenant will advise Council with the details of one contact person/position that Council will use for all queries.
- 2.8 In addition to the information required under clause 2.21 Reporting Requirements the Tenant must provide Council with:
- 2.8.1 The date of the AGM, including a copy of the advertisement of the Annual General Meeting to all members.
- 2.8.2 The name, position and contact details of any person who takes up a position of an office bearer outside the Annual General Meeting.

- 2.9 The Tenant will keep all reporting requirements up to date (for monthly reporting requirements if requested by Council).
- 2.10 The Tenant will provide Council with the Tenants Grievance Procedure.
- 2.11 The Tenant will provide Council with the Tenants Code of Conduct Procedure (for both committee/office bearers and members).
- 2.12 The Tenant will provide Council free hire of the Property one day a year as nominated by the Council to the Tenant.

3. COUNCIL'S RESPONSIBILITIES

Not Applicable

4. ADDITIONAL SIGNAGE

- 4.1 The Tenant must, at its own cost, erect a sign on the Property which must:
- 4.1.1 clearly state the name of the Tenant, the activities conducted at the Property and invite residents and ratepayers of the municipality to become members of the Tenant;
- 4.1.2 comply with all local planning laws and requirements; and
- 4.1.3 be to the reasonable satisfaction of the Council acting in its capacity as owner of the Property.

5. PERSONAL PROPERTY SECURITIES ACT 2009

5.1 Definitions

In this clause 5:

5.1.1 **PPS Law means:**

- 5.1.1.1 the PPSA and any regulations made under the PPSA, as amended from time to time; and
- 5.1.1.2 any amendment made to any other legislation as a consequence of the PPSA or any regulations made under the PPSA, including, without limitation, amendments to the Corporations Act 2001 (Cth);

5.1.2 **Council PPS Items** means any item of Personal Property which:

- 5.1.2.1 is owned or leased by the Council; and
- 5.1.2.2 is situated on the Property or the Land at any time during the term of this Lease;

5.1.3 **PPS Act** means the Personal Property Securities Act 2009 (Cth);

5.1.4 **Tenant PPS Items** means any item of Personal Property which:

- 5.1.4.1 is owned or leased by the Tenant;

- 5.1.4.2 is situated on the Property or the Land at any time during the term of this Lease; and
- 5.1.4.3 the Council has the right to require the Tenant to transfer ownership of that item to the Council, or the Tenant has the obligation to transfer ownership of that item to the Council, whether before or after the end of the term of this Lease, but does not include any Council PPS Items; and
- 5.1.5 words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

5.2 Tenant's obligations

The Tenant:

- 5.2.1 charges its interest in all Tenant PPS Items situated on the Property or the Land from time to time in favour of the Council, as security for the performance of the Tenant's obligations under this Lease, including but not limited to the Tenant's obligations to transfer ownership in the whole or any part of the Tenant PPS Items to the Council;
- 5.2.2 acknowledges and agrees that the charge granted by the Tenant under clause 5.2.1 constitutes the grant of a Security Interest which the Council is entitled to register under the PPS Act;
- 5.2.3 acknowledges that the grant of this Lease also constitutes the grant of a Security Interest in the Council PPS Items in favour of the Council, which interest the Council is entitled to register under the PPS Act; and
- 5.2.4 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Tenant PPS Items and the Council PPS Items so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Tenant PPS Items and the Council PPS Items.

5.3 Security Interests

The Tenant:

- 5.3.1 warrants that it has not created a Security Interest in respect of any Council PPS Items on or prior to execution of this Lease; and
- 5.3.2 must not create a Security Interest in respect of any Council PPS Items or Tenant PPS Items in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion.

5.4 Indemnity for breach of this clause

The Tenant must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a consequence of any breach by the Tenant of this clause.

5.5 Further obligations

The Tenant acknowledges and agrees that:

- 5.5.1 it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and
- 5.5.2 on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Tenant PPS Items and the Council PPS Items.

5.6 Clause prevails

In the event of any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail and that other provision will be read down and interpreted accordingly.

6. OCCUPATIONAL HEALTH AND SAFETY

6.1 Definitions

In this clause 6:

- 6.1.1 **OHS Act** means the Occupational Health and Safety Act 2004 (Vic).
- 6.1.2 **OHS Law** means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Property.
- 6.1.3 **OHS Regulations** means the Occupational Health and Safety Regulations 2007 (Vic).
- 6.1.4 **Principal Contractor** means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

6.2 OHS arrangements

For the purposes of the OHS Law, the Tenant agrees that:

- 6.2.1 the Tenant has sole management and control of the Property and has sole responsibility for ensuring that the Property and the means of entering and leaving them are safe and without risks to health;
- 6.2.2 Council appoints the Tenant as Principal Contractor in respect of any works to be carried out by the Tenant on the Property to which an OHS Law applies;
- 6.2.3 the Tenant must carry out such works in accordance with the requirements of the OHS Law; and

- 6.2.4 authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 6.2.2.

7. ESSENTIAL SAFETY MEASURES

7.1 Definitions

In this clause 7:

- 7.1.1 **Building Act** means the *Building Act 1993 (Vic)*;
- 7.1.2 **Building Regulations** means the *Building Regulations 2006 (Vic)*; and
- 7.1.3 **Essential Safety Measure** has the meaning given to that term in the Building Regulations.

7.2 Costs

The Tenant must reimburse to the Council within 14 days of demand the cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measures at the Property, except to the extent that any law prohibits the Council from recovering such amounts from the Tenant.

SCHEDULE 6: HIRING ARRANGEMENT

1. MULTIPLE USE OF PROPERTIES

- 1.1 In accordance with the terms of this Lease, the Tenant is not permitted to sublet or part with possession of the Property without the Council's prior consent. However, the Council is committed to ensuring full use of all its properties and encourages multiple use of those properties by various groups in accordance with this Hiring Arrangement.

2. COUNCIL PRIOR CONSENT TO HIRING ON TERMS

- 2.1 The Council consents to the Tenant hiring out the Property for use by individuals or groups during the Term of this Lease on the following basis:
- 2.1.1 The use of the Property must, in Council's reasonable opinion, not be seen to be detrimental to the Permitted Use by the Tenant.
 - 2.1.2 All users of the Property must have the same level of public liability insurance as the Tenant must have under this Lease.
 - 2.1.3 The use of the Property is to be on an occasional or short-term basis only.
 - 2.1.4 The Tenant may charge and retain any fee from the hirer. If Council believes, acting reasonably, that the Tenant is using the grant of this Lease at a subsidised rent for the purpose of making a profit from the hiring of it to other users, then Council's consent to the hiring pursuant to this Hiring Arrangement is revoked and the Tenant must apply for consent in accordance with clause 5.1 of this Lease.
 - 2.1.5 The Tenant must ensure that the hirer complies with the Tenant's obligations as set out in this Lease to the extent applicable to a short-term or occasional use. In particular, the Tenant must ensure the hirer complies with all applicable laws relating to its use of the Property and keeps the Property in a clean and tidy condition.
 - 2.1.6 The Tenant complies with the agreed arrangement outlined in clause 4

3. OTHER REQUIREMENT FOR CONSENT

- 3.1 If the Council determines, acting reasonably, that the proposed hire does or did not satisfy the conditions in this Hiring Arrangement, the Tenant must apply to the Council for consent in accordance with clause 5.1 of this Lease. The Council may make its determination at any time.

4. TENANT'S HIRING ARRANGEMENT

Not Applicable

5. INCONSISTENCY

If the event of there being an inconsistency between any one or more of the obligations imposed on the Tenant by clauses 2.1.1 to 2.1.5 inclusive and the Tenant's Hiring Arrangement detailed in clause 4 the Tenant must fulfil the obligations imposed on it by clause 4 which take priority.

SCHEDULE 7: TENANT'S PROPERTY

The following is an inventory of the Tenant's Property.

Non-Applicable

SCHEDULE 8: CONDITION REPORT

BOP Due 24/25

ITEMS TO BE CHECKED		DATE	CHECKED ALL OK	CONDITION / COMMENTS
BUILDING AUDIT-2017-18 Trim no D11/131752				
FACILITY NAME H- STEVENS PAV.		CONTACT NAME Steve Constantinou		
Managed by Building Maintenance		DATE CONDUCTED 13-7-17		
A/R= Already reported		BUILT: 1985		
13-7 *INTERNAL*				
Internal painting	1		X	LOW <input type="radio"/> MED <input checked="" type="radio"/> HIGH <input type="radio"/>
Toilets, cistern and showers	2		✓	
Flooring, tripping hazards	3		✓	OK FOR NOW
Doors, door furniture, windows, locks, latches	4		✓	
Plumb, taps, hot water services, boiling water unit	5		✓	
General lighting, switches	6		✓	WORKING BUT OLD
Water damage, rising damp	7		X	YES IN FM. P/T.
Fire extinguishers, blankets	8		✓	COUPLE OF TAGS MISSING. P.LANE
Air-con, heating, Exha fans, Asbestos condition	9		N/A	INTACT
Building movement, ceilings and walls	10		✓	MINOR. SC MONITOR
Emergency lights and exit signs-checked quarterly	11		☒	Check all lights operate correctly Replace faulty lamps TOLD. P.LANE. Clean & reflecting
Paths of travel to exits- Checked quarterly	12	"	☒	Clear of any obstruction " " Problem identified refer to comments "
Exit doors Checked quarterly	13	"	☐	Door intact Operational
EXTERNAL				
External painting	14		✓	LOW <input checked="" type="radio"/> MED <input type="radio"/> HIGH <input type="radio"/> DONE MAY.
Structural stability	15		✓	SC MONITOR. CRACKS
Security grills, doors and Door furniture			✓	
Roof, eaves, guttering, & Storm/Water pipes	16		✓	EAVES JUST REPAIRED 2-D/PIPES REPLACED.
Paving,/ paths, tripping hazards, decking	17		✓	
Window sills and glass	18		✓	
Fencing, gates and latches	19		X?	NEED REPAIRS? P&GS
Fire risks / combustible materials eg. Gas bottles, electrical	20		✓	
External security lights	21		✓	New. B/m. Done.
Hoses, hydrants	22		✓	
Retaining walls	23		✓	
Sewerage /drains& gully trap	24		✓	
Vandalism / Break-in	25		✓	
Unauthorised works	26		✓	
Shade structures, pergola's	27		✓	CLUB REPLACED 5 OF
Pit and Pump inspection	28		N/A	
Asbestos condition	29		✓	INTACT.

* CLUB DO THE MAINT. LEASE