

THIS DEED OF LEASE is made the [] day of [] 20[]

BETWEEN

SHIRE OF DALWALLINU of PO Box 141, Dalwallinu, Western Australia (the "**Lessor**")

AND

PITHARA SPEEDWAY of PO Box 282, Dalwallinu, Western Australia (the "**Lessee**")

RECITALS

- A. The Lessor is registered as the proprietor of the Land.
- B. This Lease has been entered into under and in accordance with section 3.58 of the *Local Government Act 1995*.
- C. The Lessor has agreed to lease and the Lessee has to agree to take a lease of the Premises upon the terms and conditions contained in this deed.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease, unless the contrary intention appears, the following expressions shall have the following meanings:

"**Act**" includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority including, without limitation, the Lessor;

"**Annexure 1**" means Annexure 1 of this Lease;

"**Annexure 2**" means Annexure 2 of this Lease;

"**Date of Commencement**" means the date mentioned in Schedule 1;

"**Dispute**" means a dispute referred to in clause 6.1;

"**Encumbrances**" means:

- (a) all mortgages, charges, writs, warrants, caveats (and the claims stated in any caveat) and any other right or interest of any third party affecting the Land or any part of the Land;
- (b) all reservations (if any), existing easements and restrictive covenants contained in the Crown Grant of the Land or referred to in or registered as an encumbrance on the Certificate of Title to the Land; and
- (c) all easements, restrictive covenants and encroachments (if any) affecting the Land or any part of the Land whether or not they are noted on the Certificate of Title to the Land,

and includes, without limitation, the encumbrances (if any) described in Schedule 1;

"**fixtures and fittings**" includes the items mentioned in Schedule 2;

"**Land**" means the land mentioned in Schedule 1;

"**Lessee**" means the Lessee and includes, where not repugnant to the context, the employees and agents of the Lessee;

"**Lessee's Covenants**" means each and every covenant contained or implied in this Lease to be observed or performed by the Lessee;

"**Lessor**" means the Lessor and includes, where not repugnant to the context, the employees and agents of the Lessor;

"**Lessor's Chattels**" means the chattels the property of the Lessor held at the Premises as specified in Schedule 3;

"**Lessor's Powers**" means each and every right, power and remedy exercisable by the Lessor under this Lease;

"**Outgoings**" means the charges mentioned in clause 3.3;

"**Premises**" means the premises mentioned in Schedule 1 and includes, where not repugnant to the context, any part of it;

"**Rent**" means the rent mentioned in Schedule 1 and any agreed variation of the rent determined in accordance with the provisions of this Lease from time to time;

"**Schedule 1**" means Schedule 1 of this Lease;

"**Schedule 2**" means Schedule 2 of this Lease;

"**Term**" means the term of this Lease mentioned in Schedule 1, including any renewal or extension of the term;

"**this Lease**" means this lease including any schedules and annexures; and

"**Tobacco Product**" means tobacco, a cigarette or a cigar or any other product the main, or a substantial ingredient of which is tobacco and which is designed for human consumption or use.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect the interpretation or construction of this Lease; and

unless the context indicates the contrary intention:

- (b) every covenant or agreement expressed or implied in this Lease in which more than one person covenants or agrees shall bind each person jointly and severally;
- (c) a reference to any party shall mean and include a reference to that party and the party's successors, personal representatives and transferees and a reference to a

corporation or body includes a reference to the corporation or body's successors and assigns;

- (d) words importing the singular include the plural (and vice versa) and words denoting individuals include corporations (and vice versa);
- (e) a reference to a clause, a subclause, a paragraph, a schedule or an annexure is reference to a clause, a subclause, a paragraph, a schedule or an annexure of this Lease;
- (f) a reference to any Act or to any section or provision thereof includes a reference to that Act, section or provision as amended, replaced, varied or substituted from time to time; and
- (g) where any act, matter or thing is to be done under this Lease on a Saturday or Sunday, then that act, matter or thing may be done on the Monday immediately following the relevant Saturday or Sunday or in the event of a public holiday in Western Australia the act, matter or thing may be done on the working weekday immediately following that public holiday.

2. OPERATIVE PART

The Lessor LEASES to the Lessee and the Lessee takes on lease the Premises, subject to the Encumbrances, from the Date of Commencement for the Term at the Rent and subject to and upon the covenants, conditions and stipulations contained in this Lease.

3. LESSEE'S COVENANTS

The Lessee covenants with the Lessor:

3.1 Rent

To pay the Rent (free from all deductions) in the manner and at the times mentioned in Schedule 1 to the Lessor at its address or as the Lessor may in writing from time to time direct.

3.2 Interest on overdue money

Without prejudice to the rights, powers and remedies of the Lessor that are otherwise provided for under this Lease, to pay to the Lessor on demand interest on any money that is due but unpaid for seven (7) days by the Lessee to the Lessor on any account whatsoever under this Lease. Interest shall be calculated from the due date for the payment of the money in respect of which the interest is chargeable until payment of that money in full. For the purpose of this subclause "**interest**" means 6% per annum calculated daily and capitalised on the last day of each calendar month.

3.3 Outgoings

To duly and punctually pay all electricity gas and telephone charges which now or during the Term shall be charged upon or in respect of the Premises or be payable by the owner or occupier in respect of the Premises upon the days or times when they become due and payable.

3.4 **Other liabilities**

To the extent permissible at law, to pay upon demand to the Lessor by way of reimbursement an amount equal to any money paid or outlaid by the Lessor in respect of any liability imposed on the Lessee under this Lease.

3.5 **Cost of Lease**

To pay the Lessor's reasonable and proper costs (including solicitors' costs) and all duties, fees, charges and expenses of and incidental to the instructions for and the preparation and completion of this Lease and all stamp duty payable on this Lease; and the Lessor's reasonable and proper costs (including solicitor's costs) in respect to any renewal of the Term, and any application for the consent of the Lessor and of or incidental to any and every breach or default by the Lessee under this Lease and in or incidental to the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Lessor under or by virtue of this Lease and the reasonable fees of all professional consultants reasonably and properly incurred by the Lessor in consequence of or in connection with any breach or default by the Lessee under this Lease.

3.6 **Maintain and repair Premises**

(a) **Generally**

During the Term and for so long as the Lessee remains in possession or occupation of the Premises, to maintain, replace, repair, clean and keep the Premises clean and in good and substantial repair, order and condition having regard to the age of the Premises at the Date of Commencement PROVIDED THAT:

- (i) this subclause shall not impose on the Lessee any obligation in respect of damage by earthquake, aircraft, riot, civil commotion, fire, flood, lightning, storm, tempest and reasonable wear and tear, act of God and war unless the damage is caused by the neglect, default or misconduct of the Lessee or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee or its employees, agents, contractors or invitees;
- (ii) this subclause shall not impose on the Lessee any obligation in respect of any structural maintenance, replacement or repair except when rendered necessary by any act, neglect, default or omission on the part of the Lessee or its employees, agents, contractors or invitees or by the Lessee's particular use or occupancy of the Premises;
- (iii) all electric globes and fluorescent tubes in the Premises which may be damaged, broken or fail for any reason shall be replaced by the Lessee at its expense; and
- (iv) the expression "**reasonable wear and tear**" shall not include excessive wear to floor coverings in the Premises

(b) **Fixtures, fittings, plant and equipment**

To repair and make good any damage (regardless of how minor) which may be caused to the Premises at any time by the installation or removal by the Lessee of any fixtures, fittings, plant or equipment supplied and fitted by the Lessee or on behalf of the Lessee. Any areas of the Premises that are affected in any way by the

removal or installation of such fixtures, fittings, plant or equipment must be placed in a state of repair and condition as if the installation and the removal of the relevant fixtures, fittings, plant or equipment had never taken place. This obligation shall include, without limitation, an obligation on the Lessee to place all walls, floors, ceilings, carpets, skirting boards, plasterwork, paintwork and wallpaper in a state that is aesthetically consistent with the immediate surrounding areas and the rest of the Premises.

(c) **Paint and decorate**

During the last three (3) months of the Term or upon any sooner determination of this Lease to properly paint and varnish with at least two coats of good quality paint and varnish (in colours approved by the Lessor in writing) those parts of the Premises as are now painted and varnished or are usually painted and varnished and to properly re-decorate in any other fashion (with suitable materials of good quality approved of by the Lessor in writing) all parts of the Premises that have been previously or are usually decorated. The Lessor shall not unreasonably withhold any approval required under this paragraph.

(d) **Carpets**

That any carpet installed by the Lessee shall immediately become and shall remain the property of the Lessor.

3.7 **Use of Premises**

(a) **Generally**

Not to use or permit the Premises to be used as the residence or sleeping place of any person or for auction sales but to use the Premises only for the purpose mentioned in Schedule 1 and for no other purpose whatsoever.

(b) **Offensive activities**

Not to do, exercise or carry on or allow any person to do, exercise or carry on in the Premises any noxious, noisome or offensive act, trade, business, occupation or calling or any act, matter or thing whatsoever which may cause nuisance, damage or disturbance to the Lessor or occupier of any building in the neighbourhood.

(c) **Birds, animals**

Not to keep any birds or animals in or about the Premises.

(d) **Lavatories etc.**

Not to use or allow to be used the lavatories, toilets, sinks and drainage and other plumbing facilities in the Premises for any purposes other than for which they were constructed or provided.

(e) **Chemicals etc.**

Not to use or allow to be used any chemicals or inflammable gases, fluids or substances on the Premises except where reasonably necessary in the normal course of the use of the Premises for the purpose mentioned in paragraph (a).

(f) **Signs**

Not, without the prior written consent of the Lessor (which consent shall not be unreasonably withheld), to construct, display, affix or exhibit on or to the exterior or interior of the Premises any signs, lights, embellishments, advertisements, names or notices visible from outside the Premises.

(g) **Removal of rubbish**

To keep the Premises free from dirt and rubbish and to store and keep all trade waste, trash and garbage in proper receptacles.

(h) **Floor overloading**

Not to do or allow anything to be done on the Premises which would result in excessive stress, strain or floor loading to any part of the Premises except to those parts of the Premises designated in writing by the Lessor.

(i) **Pest control**

To take all reasonable precautions to keep the Premises free of rodents, vermin, insects, pests, birds and animals.

(j) **Not to pollute**

To do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

(k) **No smoking**

Not to use or allow the Premises to be used for smoking, holding or otherwise having control over an ignited Tobacco Product.

3.8 **Entry by Lessor and others**

To permit entry to the Premises at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency, when notice shall not be required):

(a) **To inspect**

By the Lessor and its agents and employees to view the state of repair for the purposes of ensuring compliance by the Lessee with all or any of the Lessee's Covenants.

(b) **To repair**

By the Lessor and its agents, employees and contractors with workmen and others and all necessary materials and equipment for the purpose of complying with any request, requirement, notification or order of any authority having jurisdiction or authority over or in respect of the Premises for which the Lessee is not liable under this Lease or for the carrying out of repairs, renovations, maintenance, modifications, extensions, alterations or replacements to the Premises and all plant, machinery and other building equipment within the Premises PROVIDED THAT

in the exercise of this right the Lessor shall use its best endeavours not to cause any undue inconvenience to the Lessee.

3.9 Alterations and installations

(a) Generally

Not to make or allow to be made to the Premises any alterations or external projection or any structural alterations or to cut, maim or injure or allow to be cut, maimed or injured any of the principal structure or walls or any part thereof without the prior written consent of the Lessor PROVIDED THAT such consent shall not be withheld in the case of any structural alterations or additions required to be made to the Premises by the Lessor or any other competent statutory authority by reason of the particular use to which the Premises are put by the Lessee. Any such structural alterations or additions shall be effected at the sole cost of the Lessee to a specification approved in writing by the Lessor prior to the commencement of those structural alterations or additions.

(b) Carried out in workmanlike manner

That all buildings, erections, improvements and alterations to be constructed and all works carried out or executed on the Premises by the Lessee shall be constructed, carried out or executed by the Lessee in a proper and workmanlike manner and under the supervision and to the reasonable satisfaction of the Lessor's building surveyor (or such other officer of the Lessor as the Lessor may appoint) and in the event of any dispute the certificate of the building surveyor (or such other officer of the Lessor) shall be final and binding upon the parties.

(c) Plant and equipment

Not to make any alterations or additions to any plant, equipment, fixtures or fittings forming part of the Premises (including, without limitation, any air-conditioning plant, electrical fittings, plumbing and fire warning or prevention systems) ("**Plant and Equipment Alterations**") without the Lessor's prior written consent (which may be withheld in the Lessor's discretion or given on such terms and conditions as the Lessor considers fit). Any application for consent shall be accompanied by detailed plans and specifications and, if approved by the Lessor, any works shall be carried out by the Lessee in a proper and workmanlike manner and under the supervision and to the reasonable satisfaction of such officer of the Lessor as the Lessor may appoint, and in the event of any dispute the certificate of the officer shall be final and binding upon the parties.

If any Plant and Equipment Alterations are made by the Lessee at any time then, on the expiry or sooner determination of the Term, the Lessee shall at the Lessor's request, promptly reinstate and restore the Premises as nearly as possible to its original state and shall repair and make good any damage (regardless of how minor) which may be caused to the Premises as a result of the reinstatement and restoration works. This obligation shall include, without limitation, an obligation on the Lessee to place all walls, floors, ceilings, carpets, skirting boards, plasterwork, paintwork and wallpaper in a state that is aesthetically consistent with the immediate surrounding areas and the rest of the Premises.

(d) **Window treatments**

Not without the prior written consent of the Lessor to install any other form of window treatment to the windows of the Premises either in addition to or in replacement of the existing curtains and blinds unless and until they become worn or be damaged in which case the Lessee shall in the event that such wear or damage is caused by reason of the Lessee's own act or omission replace them with curtains and blinds of similar quality, colour and design (unless otherwise agreed by the parties) to the reasonable satisfaction of the Lessor and all replacements shall immediately become and remain the property of the Lessor.

3.10 **To report certain matters to the Lessor**

(a) **Broken glass and equipment**

To immediately report to the Lessor any breakage of glass including plate glass and exterior windows and all damaged or broken heating, lighting or electrical equipment or plumbing installed upon the Premises.

(b) **Defects**

To give to the Lessor prompt notice in writing of any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

(c) **Change in office bearers**

Where the Lessee is an incorporated association, to advise the Licensor of the name, address and phone number of the persons then appointed or elected to the position of President, Secretary and Treasurer (or like positions) within the Lessee, as soon as practicable after:

- (i) the Date of Commencement; and
- (ii) any change in those details.

3.11 **No assignment**

Not to assign, license, mortgage, charge or otherwise part with the possession of the Premises or any part of the Premises or in any way dispose of the benefit of this Lease without the prior written consent of the Lessor PROVIDED THAT:

(a) **Consent not unreasonably withheld to assignment**

If the Lessee wishes to assign the whole of the Premises and the benefit of this Lease the Lessor shall not unreasonably withhold its consent to that assignment if:

- (i) the proposed assignee is a respectable, responsible and solvent person (the onus of proof of which shall be upon the Lessee);
- (ii) the Lessee procures the execution by the proposed assignee of a deed of assignment of this Lease to which the Lessor is a party prepared and completed by the Lessor's solicitors at the reasonable cost of the Lessee in

all respects and the covenants and agreements on the part of any assignee shall be deemed to be supplementary to this Lease and shall not in any way relieve the Lessee from its liability under this Lease;

- (iii) all Rent and Outgoings then due or payable shall have been paid and there shall not be any existing unremedied breach of any of the Lessee's Covenants;
- (iv) the assignment contains a covenant by the assignee with the Lessor that the assignee at all times during the continuance of the Term will duly observe and perform all the Lessee's Covenants; and
- (v) the Lessee pays to the Lessor all proper and reasonable costs, charges and expenses incurred by the Lessor of and incidental to any enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility and solvency of any proposed assignee;

(b) **Corporate assignee**

If the assignee is a company then it shall be a condition of the Lessor's consent to any deed of assignment that the directors or the substantial shareholders of that company guarantee to the Lessor the observance and performance by the assignee of the Lessee's Covenants.

(c) **No release of assignor**

The covenants and agreements of any assignee shall be deemed to be supplementary to the Lessee's Covenants and shall not in any way relieve or be deemed to relieve the Lessee from the Lessee's Covenants;

PROVIDED FURTHER THAT if the Lessee is a corporation any change in the beneficial ownership of a substantial shareholding (within the meaning of Part 6.7 of the *Corporations Law*) in the corporation or any related body corporate within the meaning of section 50 of the *Corporations Law* shall be deemed to be an assignment of the Premises and the benefit of this Lease for the purposes of this subclause;

AND IT IS EXPRESSLY AGREED AND DECLARED that sections 80 and 82 of the *Property Law Act 1969* are hereby excluded; and

The Lessee acknowledges and agrees that the failure by either the Lessee or any other relevant party to comply strictly with each of the conditions, stipulations and requirements contained in paragraphs (a) or (b) will constitute reasonable grounds upon which the Lessor may withhold its consent to any assignment of this Lease proposed by the Lessee.

3.12 **Trust**

Not without the prior written consent of the Lessor:

- (a) hold the Lessee's interest in this Lease on trust for any party other than pursuant to the trust (if any) specifically mentioned in Schedule 1; or
- (b) declare a trust of the Lessee's interest in this Lease; or

- (c) vary, amend, alter or revoke the terms contained in any trust deed or add to or vary the beneficiaries of the trust or distribute or join in the distribution of any or all of the capital of the trust or in any other way vest the trust.

Any holding in trust or declaration of trust, amendment, alteration, revocation or distribution contrary to this subclause shall be deemed to be an assignment of the Lease to which all of the provisions of clauses 3.11(b), (b) and (c) shall apply.

3.13 **Comply with Acts**

- (a) **Generally**

Notwithstanding anything to the contrary contained or implied in this Lease, to comply with all Acts relating to the Premises or the use of them PROVIDED THAT the Lessee shall not be under any liability in respect of any structural alterations required by any Act other than caused or contributed to by the Lessee's particular use or occupation of the Premises.

- (b) **Fire regulations**

In the positioning of partitions or any fixtures or fittings installed by the Lessee on the Premises, to comply with all Acts relating to fire detection and alarm and to pay to the Lessor the reasonable cost of effecting any alterations to the thermal detectors or other fire alarm installations which may be necessary to comply with any Act or any requirements of the Fire & Accident Underwriters' Association, the Insurance Council of Australia and the Fire Brigades Board of Western Australia.

- (c) **Use of Premises**

The Lessor gives no warranty as to the use to which the Premises may be or are suitable to be put. The Lessee acknowledges that it has satisfied itself as to the requirements of all Acts in relation to the use of the Premises and enters into this Lease with full knowledge of and subject to any prohibitions under any Act. The Lessee at its cost shall obtain any necessary consent required pursuant to any Act to enable it to occupy the Premises for the purposes of its business.

3.14 **Public risk insurance**

To effect and keep effected in respect of the Premises in the joint names of the Lessor and Lessee adequate public risk insurance (including insurance against the risks referred to in subclause 3.17) for the time being in an amount not less than the amount mentioned in Schedule 1 in respect of any one claim or such higher amount as the Lessor shall from time to time reasonably require with an insurer approved by the Lessor (which approval shall not be unreasonably withheld) and to notify the Lessor of the policy details as soon as practicable after the Date of Commencement and to ensure that the insurance conforms with the reasonable requirements from time to time of the Lessor of which the Lessee is given notice and:

- (a) if required by the Lessor to produce, on demand, a true copy of the policy in respect of public risk insurance to the Lessor and true copies of the receipts for the last premium;

- (b) to deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a true copy of a certificate by the insurer in respect of the public risk insurance and the currency of the policy; and
- (c) not to alter the terms or conditions of the policy without the written approval of the Lessor and to promptly deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in respect of any public risk insurance policy effected by the Lessee pursuant to this subclause.

3.15 **Other insurance**

- (a) During the Term to effect and keep effected policies of insurance with an insurer approved by the Lessor (which approval shall not be unreasonably withheld) in the joint names of the Lessor and the Lessee in relation to any risk relating to the Lessor's ownership or interest in the Premises and which shall include (but shall not be limited to) premiums in respect of insurance for fire (including (but not limited to) architects' and other consultants' fees and the cost of demolition and removal of debris), Lessor's fixtures and fittings and plate glass, public risk or liability to the public, fixed shopfronts installed by the Lessor and plate glass, sprinkler leakage and water damage (including (but not limited to) loss of the other amounts payable under clause 3).
- (b) As soon as practicable after the Date of Commencement, to deliver to the Lessor a true copy of a certificate from the Lessee's insurer certifying that the Lessee is insured in the manner specified in paragraph (a) or evidence, to the satisfaction of the Lessor, of the existence of the policies for the insurance specified in paragraph (a), and true copies of the receipts relating to payment of the premiums in relation to such policies.
- (c) If required by the Lessor to produce, on demand, true copies of the policies for the insurance specified in paragraph (a) and true copies of the receipts for the last premiums.
- (d) To deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a true copy of a certificate from the Lessee's insurer certifying that the Lessee is insured in the manner specified in paragraph (a) and stating the period for which it is so insured.
- (e) Not to alter the terms or conditions of the policies for the insurance specified in paragraph (a) without the written approval of the Lessor and to promptly deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in respect of those policies.

Duly and punctually to pay all insurance premiums paid by the Lessor on behalf of itself or the Lessee or on behalf of both of them in relation to any risk relating to the Lessor's ownership or interest in the Premises and which shall include (but shall not be limited to) premiums in respect of insurance for fire (including (but not limited to) architects' and other consultants' fees and the cost of demolition and removal of debris), Lessor's fixtures and fittings and plate glass, public risk or liability to the public, fixed shopfronts installed by the Lessor and plate glass, sprinkler leakage and water damage (including (but not limited to) loss of the other amounts payable under clause 3).

Payment shall be made on or before the respective days or times upon which each amount becomes due or payable PROVIDED THAT the Lessee's liability for these payments shall

commence on the Date of Commencement subject to any proportionate payment from the Date of Commencement or to the expiration of the Term.

The Lessor will meet costs of insurance of buildings under this lease as a contribution towards the operation of that building and where a claim has been met by the Lessors insurers the Lessor will cover any excesses applicable on claims for building repairs.

3.16 **Not to invalidate insurance**

Not to do or allow any act, matter or thing upon the Premises or bring or keep anything on the Premises whereby any insurance relating to the Premises may be rendered void or voidable or whereby the rate of premium on such insurance shall be or be liable to be increased and the Lessee shall pay all additional premiums of insurance on the Premises (if any) required on account of the additional or increased risk.

3.17 **Indemnities**

(a) **Generally**

To take and be subject to the same responsibilities in regard to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner of the freehold of the Premises.

(b) **Indemnity**

To indemnify and keep indemnified the Lessor from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the Lessor may suffer or incur in connection with the loss of life, personal injury, illness and or damage to property arising from or out of any occurrence in or upon or at the Premises or the use of the Premises by the Lessee or any part thereof or to any person or the property of any person using or entering on or near the Premises howsoever occasioned or occurring (loss, injury, illness, damage or destruction caused or occasioned by any negligent act, default or omission of the Lessor or its servants, agents or contractors excepted).

(c) **Abuse of installations**

To indemnify and keep indemnified the Lessor from and against any and all loss or damage whatsoever occasioned by the neglect, use, mis-use or abuse of:

- (i) water, electricity or gas supplied to the Premises; or
- (ii) installations, fixtures or fittings for water, gas or electricity,

by the Lessee or by any servant, agent, contractor or invitee of the Lessee, and that the Lessee will pay for all damage or injury to the Premises or to the Lessor or to any other person in consequence of any breach or non-observance of the provisions of this paragraph.

(d) **Insurance moneys**

Without prejudice to the generality of paragraph (a) (to the extent that the terms and conditions of any insurances effected by the Lessee or any moneys paid to the Lessor

out of insurances effected by the Lessee do not fully indemnify the Lessor from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor shall or may be or become liable in respect of all or any of the matters referred to in subparagraphs (i), (ii) and (iii) of this paragraph) to indemnify the Lessor and keep the Lessor indemnified from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor shall or may be or become liable in respect of all or any loss or damage to property or death or injury to any person of any nature or kind and however or wherever sustained that:

- (i) is caused or contributed to by the use or occupation of the Premises except to the extent caused or contributed to by the negligence or act, default or omission of the Lessor;
- (ii) results from any act, default or omission by the Lessee under this Lease; or
- (iii) results from any notice, claim or demand to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease.

3.18 **Yielding up**

(a) **Peaceably yield up**

Upon the expiration or sooner determination of the Term, to peaceably surrender and yield up to the Lessor the Premises clean and free of rubbish and in a state of repair and condition that is entirely consistent with all of the Lessee's Covenants having been fully complied with.

(b) **Removal of Lessee's fixtures**

At or prior to the determination or termination of the Term to take, remove and carry away from the Premises all signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (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 the Lessee shall on such removal forthwith make good to the satisfaction of the Lessor any damage which may be occasioned by such removal.

(c) **Liquidated damages for failure to remove fixtures, etc.**

Without limiting the Lessee's obligations under paragraphs (a) and (b) in any way, if, after receiving a notice from the Lessor given on or at any time after the determination or termination of the Term demanding that the Lessee remove any sign, fixture, plant, equipment or other article not removed in accordance with paragraph (b) ("**Removal Notice**") the Lessee fails to comply with all of its obligations under paragraph (b) within five (5) days of the date of receipt of the Removal Notice then the Lessee shall pay to the Lessor on the demand an amount equal to the costs which may be properly charged by the Lessor for the bailment of goods from time to time.

(d) **Abandonment of fixtures**

Further or in the alternative to the Lessor's rights and powers under paragraph (c), the Lessor, at any time after the expiration or sooner determination of the Term, may give the Lessee a notice ("**Abandonment Notice**") requiring the Lessee to remove all fixtures, fittings, plant, equipment or other articles not previously removed by the Lessee in accordance with paragraph (b) ("**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 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 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. All reasonable costs incurred by the Lessor in respect of any sale shall be paid by the Lessee on demand.

Nothing shall preclude the Lessor from giving a Removal Notice and recovering the Removal Rent in accordance with paragraph (c) and later giving the Lessee an Abandonment Notice at any time pursuant to this paragraph. The Lessee's obligation to pay the Removal Rent shall cease immediately upon the Lessee's receipt of an Abandonment Notice. Nothing however, shall release the Lessee from liability to pay any Removal Rent that is in arrears on the date that the Lessee receives an Abandonment Notice.

3.19 **Not to lodge caveat or other interest against Title to Land**

(a) **Interpretation**

In this clause, a reference to a Certificate of Title to the Land includes a reference to a Certificate of Crown Land Title if the Land is Crown land.

(b) **No absolute or subject to claim caveat**

Not to lodge an absolute caveat or a subject to claim caveat over the Land or any part of the Land or against the Certificate of Title to the Land to protect the interest of the Lessee and the Lessee IRREVOCABLY APPOINTS the Lessor and every officer and employee of the Lessor for the time being authorised in that behalf by the Lessor jointly and severally, to be the true and lawful attorney for the Lessee in its name and on its behalf to execute and to lodge at the Department of Land Administration a withdrawal of any absolute caveat or subject to claim caveat AND the Lessee RATIFIES AND CONFIRMS and AGREES TO RATIFY AND CONFIRM all that the attorney shall do or cause to be done under or by virtue of this subclause and shall indemnify the Lessor in respect of any loss arising from any act done under or by virtue of this subclause and the Lessee will pay the Lessor's reasonable costs (including solicitors' costs) and expenses of and incidental to the withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Land or the Certificate of Title to the Land as provided by this subclause.

(c) **Not to register dealings**

Not to lodge or cause to be lodged any lease, sublease, mortgage, charge or other dealing against the Certificate of Title to the Land without the prior written consent of the Lessor.

3.20 Alcohol

(a) Consumption of alcohol

Not to use or allow the Premises to be used for the consumption or sale of alcohol without first obtaining the written consent of the Lessor and the Lessor shall determine any application for its consent in accordance with any alcohol policy of the Lessor from time to time.

(b) Liquor licence

That in relation to an application for a licence or permit under the *Liquor Licensing Act 1988* for the Premises it shall:

- (i) not make such an application without first obtaining the written consent of the Lessor and the Lessor shall determine any application for its consent in accordance with its alcohol policy, if any;
- (ii) if a licence or permit is granted to it, comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises clause 3.9 shall apply;
- (iii) if the licence or permit is granted to it, provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit) to the Lessor as soon as practicable after the date of grant; and
- (iv) if the licence or permit is granted to it, indemnify and keep indemnified the Lessor from and against any breach of the *Liquor Licensing Act 1988*, the licence or permit for which it may be liable as the owner of the Premises.

3.21 Incorporated association

Where the Lessee is an incorporated association, to maintain its incorporation under the *Associations Incorporation Act 2015*.

3.22 Lessor's Chattels

To ensure that the Lessor's Chattels are maintained on the Premises, used only in accordance with the purpose for which they have been installed or placed in the Premises by the Lessor and to account to the Lessor for the replacement cost of any item of the Lessor's Chattels missing or damaged at the expiration or earlier determination of this Lease.

4. LESSOR'S COVENANTS

The Lessor covenants with the Lessee, subject to the Lessee observing and performing the Lessee's Covenants:

4.1 Quiet enjoyment

That the Lessee shall and may, except as provided in this Lease, peaceably possess and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or any other person lawfully claiming by, from or under the Lessor.

4.2 Rates and taxes

To pay any local government rates, water and sewerage rates or service charges, land taxes or other taxes or charges payable in respect of the Premises.

4.3 Improvements to the Premises

To pay to the Lessee an amount equal to the value of any improvements made to the Premises during the Term by the Lessee provided that:-

- (a) such improvements shall not include any maintenance or repair effected under clause 3.6 or 3.8(b) of this Lease;
- (b) such improvements satisfy the terms of clause 3.9 of this Lease;
- (c) shall be valued by a licensed valuer appointed by agreement of the parties or in default of agreement within twenty-one (21) days of the date of expiration or earlier determination of the Term appointed at the request of either party by the President for the time being of the Australian Institute of Land Valuers and Economists (Inc.) who shall be deemed to be acting as an expert and not as an arbitrator and who shall determine the value of the improvements made to the Premises for the purposes of this clause which determination shall be binding upon the parties and shall be paid by the Lessor to the Lessee within twenty-eight (28) days of the date of receipt of the valuation.

5. MUTUAL AGREEMENTS

The parties agree as follows:

5.1 Default by Lessee

If:

- (a) the Lessee shall breach any of the Lessee's Covenants and the breach shall continue for FOURTEEN (14) DAYS after notice has been served on the Lessee by the Lessor; or
- (b) the Lessee being a company shall enter into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or a receiver or manager or administrator (voluntary or otherwise) is appointed; or
- (c) the Lessee being an incorporated association shall have its incorporation cancelled, be wound up or cease to be an association eligible to be incorporated under the *Associations Incorporation Act 2015*; or
- (d) the Lessee ceases or threatens to cease carrying on business; or
- (e) the Lessee being a natural person shall commit an act of bankruptcy,

then and in any of these cases the Lessor may at any time thereafter and without any notice or demand enter and repossess the Premises and the Term and the estate and interest of the Lessee in the Premises shall immediately determine but without prejudice to any rights of the

Lessor under this Lease and at law and without releasing the Lessee from liability in respect of any of the Lessee's Covenants.

Upon re-entry by the Lessor, the Lessor shall, after the Lessee has failed to comply with a written notice to remove its property within three (3) days, have the absolute right to remove any property left in or about the Premises and the Lessee shall indemnify the Lessor from and against all damage to that property and any reasonable costs that may be incurred by the Lessor as a consequence including but not limited to the costs of removal and storage.

5.2 Damages for breach of essential term

The Lessor and the Lessee agree that the covenants by the Lessee contained or implied in:

- (a) subclauses 3.1 and 3.3 to pay the Outgoings at the times and in the manner provided;
- (b) subclause 3.7(a) to use the Premises only for the purpose described in that subclause; and
- (c) subclause 3.11 not to assign, sub-let, license, mortgage, charge or otherwise part with possession of the Premises or any part of the Premises or in any way dispose of the benefit of this Lease except as provided for,

are (subject to the following proviso) essential terms of this Lease and the breach, non-observance or non-performance of any one of those covenants, terms or conditions shall be deemed to be a fundamental breach of the provisions of this Lease on the part of the Lessee PROVIDED THAT the presence of this subclause in this Lease shall not mean or be construed as to meaning that there are no other essential terms in this Lease. Should the Lessor terminate the Term following any such fundamental breach pursuant to subclause 5.1 without prejudice to any other right or remedy of the Lessor contained or implied in this Lease the Lessee covenants with the Lessor (and agrees with the Lessor that this covenant will survive the determination of the Term) that the Lessor shall be entitled to recover from the Lessee as and by way of liquidated damages for the breach the difference between:

- (i) the aggregate of the Outgoings which would have become payable by the Lessee to the Lessor if this Lease had expired by effluxion of time calculated at the rate payable at the date of determination (less a rebate in respect of instalments of Outgoings (calculated as aforesaid) not then accrued or due to be ascertained by applying a rate of 10% per annum to each instalment over the period by which the date for payment is brought forward by this subclause) together with any costs and expenses incurred by the Lessor or which the Lessor reasonably estimates are likely to be incurred by the Lessor as a result of such breach including the cost to the Lessor of re-letting or attempting to re-let the Premises; and
- (ii) the aggregate of the Outgoings which the Lessor by taking proper steps to re-let the Premises shall obtain or could reasonably be expected to obtain by re-letting the Premises after such determination to the date this Lease would have expired by effluxion of time PROVIDED THAT in so doing the Lessor shall not be required or obliged to offer or accept in respect of such re-letting terms, covenants, conditions or stipulations which are the same or similar to the terms, covenants, conditions or stipulations contained or implied in this Lease.

5.3 **Destruction of Premises**

If the Premises shall during the Term be destroyed or substantially damaged so as to require rebuilding or reconstruction of the Premises either party may by notice in writing to the other terminate this Lease as from the date of the giving of such notice without prejudice to the Lessor's rights in respect of any antecedent breach of the Lessee's Covenants by the Lessee.

5.4 **Lessor may remedy Lessee's default**

If the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has agreed to pay, do or effect, then on each and every occasion the Lessor shall be entitled without prejudice to any rights or powers the Lessor may have, to pay the money or to do or effect the thing by itself as if it were the Lessee and for that purpose the Lessor may enter upon and remain on the Premises for the purpose of doing or effecting any such thing and any moneys expended by the Lessor shall be repayable by the Lessee to the Lessor upon demand.

5.5 **Lessor not liable to third parties**

The Lessor shall not be responsible for any loss, damage or injury to any person or property of the Lessee or any other person in or about the Premises unless the same shall arise from the negligence of the Lessor.

5.6 **Notices**

Any notice required to be served under this Lease shall be sufficiently served on:

- (a) the Lessee if:
 - (i) left addressed to the Lessee at the Premises; or
 - (ii) forwarded to the Lessee by post to the Premises or to the address of the Lessee mentioned in this Lease; and
- (b) the Lessor if addressed to the Lessor and left at or sent by post to the Lessor's address mentioned in this Lease or such other address as may be notified to the Lessee from time to time,

and any notice sent by post shall be deemed to be given at the time when it ought to have been delivered in due course of post unless the contrary is shown.

5.7 **Holding over**

If the Lessee remains in possession of the Premises after the expiration of the Term then the Lessee shall be a monthly tenant of the Lessor at a rent equivalent to the Rent payable by the Lessee at the expiration of the Term and otherwise on the same terms and conditions of this Lease. Any holding over may be determined by either party giving one month's written notice to the other party of its intention to determine the holding over at the expiration of the period of notice or such other date as may be stated in the written notice.

5.8 **Waiver**

No waiver by the Lessor of any of the Lessee's Covenants shall operate as a waiver of another breach of the Lessee's Covenants.

5.9 **Severance**

In the event of any part of this Lease being or becoming void or unenforceable whether due to the provisions of any Act or otherwise then that part shall be severed from this Lease to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any severance.

5.10 **Act by agent**

All acts and things which the Lessor or the Lessee is required or empowered to do under this Lease may be done by the Lessor or the Lessee (as the case may be) or the solicitor, agent, contractor or employee of the Lessor or the Lessee (as the case may be).

5.11 **Exercise of powers**

The Lessor may exercise the Lessor's Powers without any proof of default by the Lessee or the continuance of that default or any notice being required (other than as provided in this Lease) and notwithstanding any laches, neglect or previous waiver by the Lessor in respect of any of the Lessee's Covenants or the exercise of any of the Lessor's Powers.

5.12 **Non-merger**

The terms or conditions of this Lease or any act, matter or thing done under or by virtue of or in connection with this Lease or any other agreement between the parties to this Lease shall not operate as a merger of any of the rights and remedies of the parties in or under this Lease or in or under any such other agreement all of which shall continue in full force and effect.

5.13 **Proper law**

This Lease shall be governed by the law of Western Australia.

5.14 **Effect of execution**

This Lease shall be binding upon each person or party who has executed it notwithstanding:

- (a) the failure of any other person named as a party to execute it;
- (b) the avoidance or unenforceability of any part of this Lease; or
- (c) the avoidance or unenforceability of this Lease or any part of this Lease against any signatory or intended signatory.

6. **DISPUTE RESOLUTION**

6.1 **Notice of Dispute**

In the event of a dispute between the Lessor and the Lessee concerning this Lease in any way, or concerning the rights and liabilities of the Lessor or the Lessee, the affected party may give the other a written notice setting out the material particulars of the Dispute.

6.2 **Appointment of representative**

Each party shall appoint a senior officer, or other person, with authority to negotiate and reach settlement, and the parties' representatives shall personally meet in Bindoon within ten (10) business days of the date of the receipt of the notice calling for such a meeting.

6.3 Best endeavours to resolve Dispute

The parties' representatives in good faith, and using their best endeavours at all times, shall attempt to resolve the Dispute.

7. ARBITRATION

7.1 Notice to arbitrate

Provided that a party has not given a notice under clause 6.1, or if it has that the Dispute has not been resolved under clause 6.3, then:

- (a) any party to that dispute shall give notice in writing to the other party; and
- (b) at the expiration of seven (7) days, unless the matter is settled in the interim, the Dispute shall be submitted to the arbitration of a single arbitrator who shall be a person appointed by the President of the Institute of Arbitrators (Western Australian Division).

7.2 Final decision

The arbitrator's award shall be final and binding on the parties.

7.3 No entitlement to commence an action

No party is entitled to commence or maintain an action upon a Dispute until the matter in dispute has been referred to and determined by the arbitrator, and then only for the amount or relief to which the arbitrator, by her or his award, finds that party is entitled.

7.4 Costs of arbitration

The costs of the submission, reference or award are in the discretion of the arbitrator.

8. RENEWAL OF TERM

8.1 Notice of renewal

If the Lessee wishes to renew the Term and gives the Lessor written notice not earlier than six (6) calendar months but not later than three (3) calendar months prior to the expiration of the Term and if at the time of giving such notice there is no outstanding breach or non-observance of any of the Lessee's Covenants and if in the meantime the Lessor's right of re-entry has not otherwise arisen, then the Lessor will at the cost of the Lessee grant to the Lessee a renewal of the Term for the further period specified in Schedule 1 and otherwise on the same terms and conditions as are contained or implied in this Lease other than this right of renewal subject always to the provisions of this clause.

8.2 Execution of deed of extension of Lease

Upon the valid exercise of the option to extend this Lease, the Lessee shall, prior to the expiration of the then current Term, execute a deed recording the extension of this Lease.

The deed shall be prepared by the Lessor's solicitors in a form approved by the Lessor at the reasonable expense of the Lessee in all respects including payment of all stamp duty and the Lessor's solicitors' reasonable costs and disbursements.]

9. **WHOLE OF AGREEMENT**

The Lessee acknowledges and declares that in entering into this Lease the Lessee has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Lessor in respect to the suitability of the Premises or the finish, facilities, amenities or services on the Premises and that the covenants and provisions contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties and it is expressly agreed and declared that no further or other covenants or provisions whether in respect of the Premises or otherwise shall be deemed to be implied or to arise between the parties by way of collateral or other agreement.

10. **MORATORIUM NEGATIVED**

The application to this Lease of any moratorium or other Act whether State or Federal having the effect of extending the Term, reducing or postponing the payment of the Rent hereby reserved or any part of the Rent, or otherwise affecting the operation of the covenants, conditions and stipulations on the part of the Lessee to be performed or observed, or providing for compensation, rights or privileges at the expense of the Lessor in favour of the Lessee or any other person, is hereby expressly excluded and negatived.

11. **GOODS AND SERVICES TAX**

11.1 **Definitions**

In 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);

"GST" means any goods and services tax, value added tax, retail turnover tax, consumption tax, or any similar tax, impost or duty introduced or charged by the Commonwealth of Australia or any state or territory of Australia whether before, on or after the Date of Commencement, which is or may be levied or becomes payable in connection with the supply of the Premises or any goods, services or other things provided by the Lessor under this Lease;

"GST Adjustment Rate" means the amount of any increase in the rate of tax imposed under a GST which is above the GST Rate; and

"GST Rate" means 10%, or such other figure equal to the rate of tax imposed on the introduction of GST into Australia.

11.2 **Lessee must pay**

(a) **GST**

If a GST is introduced or applies to impose tax on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the lease of the Premises or any goods, services or other things supplied under this Lease then, as from the date of any such introduction or application:

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

(b) **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 subclause 11.2(a)(ii).

11.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to subclause 11.2, the Lessor shall in the month in which the Basic Consideration is to be paid, issue an invoice which enables the Lessee to submit a claim for a credit or refund of GST.

12. WESTERN AUSTRALIAN PLANNING COMMISSION CONSENT

If for any reason this Lease requires by law the consent of the Western Australian Planning Commission then this Lease is made expressly subject to and is conditional upon the granting of the consent of the Western Australian Planning Commission.

13. SPECIAL TERMS

The special terms covenants and conditions (if any) set out in Schedule 1 shall be deemed to be incorporated in this Lease as if fully set out herein and in the event of there arising any inconsistency with the terms, covenants and conditions contained in this Lease then the terms, covenants and conditions set out in Schedule 1 shall prevail.

SCHEDULE 1

1. **The Lessee**
Pithara Speedway (Inc.)
PO Box 282
DALWALLINU WA 6609
2. **The Encumbrances**
Nil.
3. **The Land**
Portion of Melbourne Location 2432 and being Lot 1 of Diagram 13289 (Vol 47 Fol 19A) on the said land upon which the Pithara Speedway is situated.
4. **The Premises**
The buildings known as the Kiosk Pavilion, Toilets and Shed situated at Lot 1 Pithara East Road, Pithara on part of Portion of Melbourne Location 2432 of Diagram 13289 (Vol 47 Fol 19A), on the plan annexed to this Lease and marked "Annexure 1", and includes all and floor coverings and other fixtures and fittings belonging to the Lessor therein and all additions or modifications and replacements for the time being.
5. **Date of Commencement**
1 March 2018.
6. **Term**
The term of this agreement is for a period of Twenty one (21) years.
7. **Term of renewal**
NA
8. **Rent**
per annum: (as per the Shire of Dalwallinu Schedule of Fees and Charges)
 - (a) subject to review on each anniversary of the Date of Commencement of this Lease when the rental shall be increased by a percentage equal to the average percentage increase in the Consumer Price Index (all groups for Perth) ("CPI") over the preceding 12 months, to the intent that if there has been an average percentage decrease in the CPI during the relevant period the annual rental shall remain the same for the succeeding year; and
 - (b) which is payable in advance by equal successive calendar monthly payments on the first day of each month and each year during the Term.
9. **Permitted use of Premises**
Speedway racing and associated events, entertainment and social functions, exhibitions, community based events ,community group/club activities and general recreation.

10. **Public risk insurance**
Twenty million dollars (\$20,000,000).
11. **Special terms**
Nil.
12. **Trust**
Nil.

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SCHEDULE 2

Fixtures and Fittings

Nil.

DRAFT

SCHEDULE 3

Lessor's Chattels

Nil.

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EXECUTED by the parties as a deed

THE COMMON SEAL of)
SHIRE OF DALWALLINU)
was hereunto affixed by authority of its)
Council in the presence of:)

(Signature of President)

(Signature of Chief Executive Officer)

(Name of President in full)

(Name of Chief Executive Officer in full)

THE COMMON SEAL of)
PITHARA SPEEDWAY CLUB (INC.))
was affixed by the authority of a resolution)
of the Board in the presence of:)

(Signature of authorised sealing officer/Secretary)

(Signature of authorised sealing officer/President)

(Name of authorised sealing officer/Secretary)

(Name of authorised sealing officer/President)

ANNEXURE 1

Plan of Premises

DRAFT

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DRAFT: 22 December 2017

STANDARD LEASE DOCUMENT

SHIRE OF DALWALLINU

("Lessor")

AND

PITHARA SPEEDWAY CLUB (INC.)

("Lessee")

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