

LEASE OF CROWN LAND (L)

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
Lot 6229 on Diagram 1243; and	PART	LR3017	75
That part of Lot 6229 on Plan 3286	PART	LR3017	75
Comprising an area of approximately 79,106 m ² as shown on the Premises Plan attached to this Lease as Annexure "A"			

LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS (Note 2)

LESSOR (Note 3)

TOWN OF EAST FREMANTLE of 135 Canning Highway, East Fremantle, Western Australia.

LESSEE (Note 4)

BELGRAVIA HEALTH & LEISURE GROUP PTY LTD (ACN 005 087 463) of Level 4, 102 Albert Road, South Melbourne, Victoria

TERM OF LEASE (Note 5)

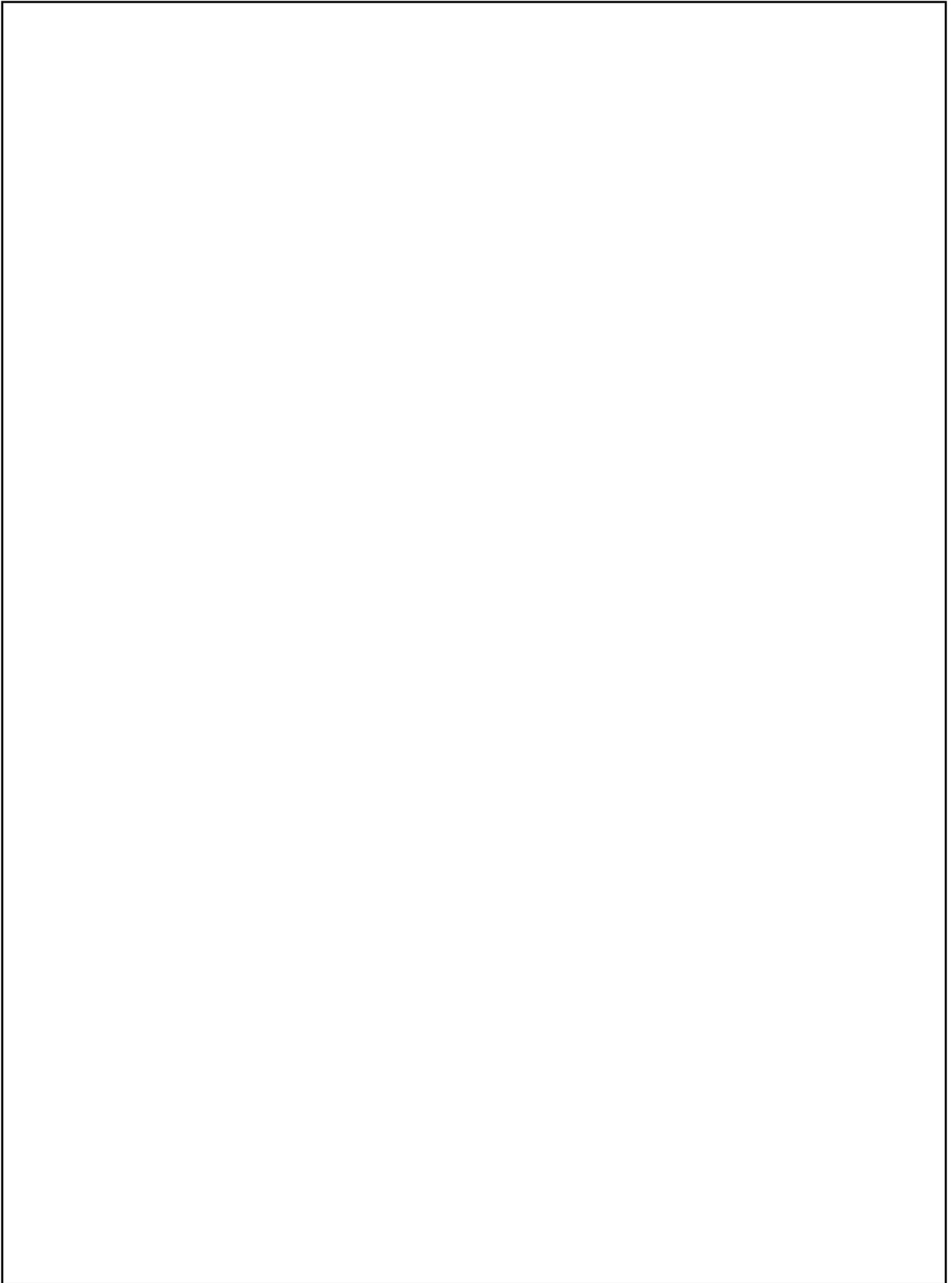
5 years commencing on _____ and expiring on _____, together with the right to renew for one further term of 5 years commencing on _____ and expiring on _____.

THE LESSOR HEREBY LEASES TO THE LESSEE the land above described subject to the encumbrances as shown hereon (Note 6)

for the above term for the clear yearly rental of (Note 7) (See within Lease)
 payable (Note 8) (See within Lease)

subject to the covenants and powers implied under the *Land Administration Act 1997* and the *Transfer of Land Act 1893* as amended (unless hereby negated or modified) and also to the covenants and conditions contained herein.

The following covenants by the lessee are to be construed according to section ninety-four of the *Transfer of Land Act 1893* as amended (Note 9)



Lease

44 Moss Street & 61-69 Allen Street, East
Fremantle

Town of East Fremantle

Landlord

and

Belgravia Health & Leisure Group Pty Ltd

(ACN 005 087 463) as trustee for the Belgravia Leisure Unit Trust

Tenant

and

Belgravia Group Pty Ltd

[(ACN 050 138 246)

Guarantor

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Reference Schedule

Particulars

Item 1. Landlord

(the **Parties**)

Town of East Fremantle of 135 Canning Highway, East Fremantle, Western Australia.

Item 2. Tenant

(the **Parties**)

Belgravia Health & Leisure Group Pty Ltd (ACN 005 087 463) of Level 4, 102 Albert Road, South Melbourne, Victoria 3205.

Item 3. Guarantor

(clause 18)

Belgravia Group Pty Ltd (ACN 050 138 246) of Level 4, 102 Albert Road, South Melbourne, Victoria 3205.

(the **Parties**)

Item 4. Land

(clause 1.1)

Lot 6229 on Diagram 1243 and being the whole of the land comprised in Certificate of Crown Land Title Volume LR3017 Folio 75.

Lot 6229 on Plan 3286 and being the whole of the land comprised in Certificate of Crown Land Title Volume LR3017 Folio 75.

Item 5. Premises

(clause 1.1)

That part of the Land comprising approximately 79,106 m² as is shown hachured on the Premises Plan and known as the East Fremantle Oval Precinct.

Item 6. Commencement Date

(clause 2.2)

[REDACTED].

Item 7. Term

(clause 2.1)

5 years .

Item 8. Rent

(clause 3.1)

\$1.00 (ONE DOLLAR) per annum plus GST.

Item 9. Not Used

Item 10. Insured Amount (Public Liability Insurance)

(clause 5.2)

\$20 million.

Item 11. Permitted Use

(clause 7.6)

- (a) football oval to accommodate WAFL – men (league, reserves and colts grades) matches, WAFL – women (league, reserves and colts grades) matches, WAFC Pathway Programs for Under 14s, Under 15s and Under 17s Development Squads, Country Football matches, Community Football matches, School Football matches (on request), Auskick programs and other Australian Rules football activities and other sporting, leisure, recreational and entertainment activities.
- (b) bowling greens to accommodate pennants competitions, corporate bowls events, social games and barefoot social games and other lawn bowls activities;
- (c) croquet courts for organised Croquet West competitions, social games and other croquet activities;
- (d) administration offices for a WAFL football club;
- (e) community sport and administration offices associated with community sporting clubs (including croquet and bowls);
- (f) indoor and outdoor training, education, medical, rehabilitation and recovery activities associated with a WAFL sports organisation;
- (g) health club;
- (h) functions and catering space;
- (i) food and beverage including café, bar and restaurant;
- (j) sports medicine, allied health, medical facilities or other commercial uses as approved by the Landlord;
- (k) community playgroup;
- (l) community health;
- (m) community gardens;
- (n) administration offices for the Operator; and
- (o) any other purpose from time to time agreed by the Parties,

and without expanding the definition of “Permitted Use”, it does not include outdoor music concerts or outdoor live music events unless the Landlord has provided its prior written consent. This does not preclude the Operator from conducting live

music concerts and music events inside the Building provided it complies with all applicable Laws and Requirements with respect to noise.

Item 12. Further Term

(clause 17)

5 years.

Item 13. Particulars for service of Notices

(clause 16)

The particulars for service of notices are:

Landlord Address : 135 Canning Highway, East Fremantle WA 6158

 Email : admin@eastfremantle.wa.gov.au

 Attention : The Chief Executive Officer

Tenant Address : [REDACTED]

 Email : [REDACTED]

 Attention : [REDACTED]

Item 14. Community Garden Sublessee

(clause 1.1)

[REDACTED]

Date 2023

Parties

Landlord	The person described in Item 1 of the Reference Schedule
Tenant	The person described in Item 2 of the Reference Schedule
Guarantor	The person described in Item 3 of the Reference Schedule

This deed provides:

1. Definitions and rules of interpretation

1.1 Definitions

In this Lease:

Access Card means a security access key or card or other security access device.

Accountant means a member of either the Institute of Chartered Accountants of Australia or the Australian Society of Certified Practising Accountants.

ADI has the meaning given to that term in the *Banking Act 1959* (Cth).

Approving Authority means the Authority responsible for granting any consents, approvals, authorisations, licences and permits under Law in relation to any use or occupation of the Premises or any development on the Premises.

Assessment means an assessment, charge or levy issued by an Authority in respect of Rates and Taxes.

Authority means any government, statutory, public or other authority or body having jurisdiction over the Land or the Premises or any matter or thing relating to it, including those assessing or imposing local authority or municipal rates, water rates, land tax and metropolitan region improvement tax, and those providing or supplying services and utilities to the Premises.

Base Building Standard and Configuration means a condition acceptable to the Landlord, acting reasonably:

- (a) being as-new condition, with:
 - (i) all the Tenant's fixtures and fittings (including any partitioning) having been removed and any damage caused having been made good to the Landlord's satisfaction; and
 - (ii) all surfaces being clean and free of damage;

- (b) in which the Premises may be immediately re-let; and
- (c) in which all Building Services have been placed in (or returned to) a standard or "empty floor" layout.

BEEC means a Building Energy Efficiency Certificate, as defined in the *Building Energy Efficiency Disclosure Act 2010* (Cth).

Bowling Greens means the two synthetic turf bowling greens within the Premises and identified as "Bowling Greens" in the Premises Plans.

Building means the two-storey multipurpose building on the Land shown as the "New Building" on the Premises Plan.

Building Services means all services supplied to or in the Premises including gas, water, drainage, fresh air, exhaust systems, electricity, sprinkler systems, heating, lighting, lift services, electrical services, electrical power supply, hydraulic services, mechanical services, the air conditioning system, telecommunication services, data transmission services and includes the Landlord's Property.

Business Day means a day not being a Saturday, Sunday, public holiday or bank holiday in Perth.

CAHS means the Metropolitan Health Surface (ABN 13 993 250 709) trading as the Child and Adolescent Health Service.

CAHS Sublease means the sublease of the CAHS Sublease Area between the Tenant as sublessor and CAHS as sublessee.

CAHS Sublease Area means that part of the Premises shown hachured on the plan annexed as Annexure J.

Claim means any claim, demand or cause of action including any claim, demand or cause of action arising from a breach of this Lease:

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or in equity;
- (d) under any Law; or
- (e) under the *Competition and Consumer Act 2010* (Cth), or any similar Law in Western Australia.

Commencement Date means the date specified in Item 6 of the Reference Schedule.

Community Garden Sublease means the sublease of the Community Garden Sublease between the Tenant as sublessor and the Community Garden Sublessee as sublessee.

Community Garden Sublease Area means that part of the Premises shown hachured on the plan annexed as Annexure I.

Community Garden Sublessee means the person specified in Item 14 of the Reference Schedule.

Contamination has the same meaning as defined in the *Contaminated Sites Act 2003* (WA).

Corporations Act means the *Corporations Act 2001* (Cth).

Croquet Courts means the three croquet courts situated within the Premises and identified as "Croquet Greens" in the Premises Plan.

Default Rate means 15% per annum.

EFBC means East Fremantle Bowls Club.

EFBC Licence means the non-exclusive licence of the EFBC Licence Area between the Tenant as licensor and EFBC as licensee.

EFBC Licence Area means that part of the Premises shown hachured on the plan annexed as Annexure E.

EFBC Sublease means the sublease of the EFBC Sublease Area between the Tenant as sublessor and EFBC as sublessee.

EFBC Sublease Area means that part of the Premises shown hachured on the plan annexed as Annexure D.

EFCC means East Fremantle Croquet Club.

EFCC Licence means the non-exclusive licence of the EFCC Licence Area between the Tenant as licensor and EFCC as licensee.

EFCC Licence Area means that part of the Premises shown hachured on the plan annexed as Annexure G.

EFCC Sublease means the sublease of the EFCC Sublease Area between the Tenant as sublessor and EFCC as sublessee.

EFCC Sublease Area means that part of the Premises shown hachured on the plan annexed as Annexure F.

EFFC means East Fremantle Football Club.

EFFC Licence Area means that part of the Premises shown hachured on the plan annexed as Annexure C.

EFFC Sublease means the sublease of the EFFC Sublease Area between the Tenant as sublessor and EFFC as sublessee.

EFFC Sublease Area means that part of the Premises shown hachured on the plan annexed as Annexure B.

EFFP means East Freo Playgroup Inc.

EFP Licence means the sublease of the EFP Licence Area between the Tenant as licensor and EFP as licensee.

EFP Licence Area means that part of the Premises shown hachured on the plan annexed as Annexure H.

Encumbrance means each encumbrance, interest, limitation and notification whether or not appearing on the certificate of title to the Land and the registered plan of survey in relation to the Land as at the Commencement Date.

Environmental Law means:

- (a) all Laws relating to town planning, the environment, noise, development, construction of structures, health, contamination, radiation, pollution, waste disposal, land management and hazardous materials;
- (b) all conditions of all consents, approvals, authorisations, licences and permits issued under any law in clause (a); and
- (c) regulations and any order, guideline, notice, direction or Requirement of any Authority in relation to these matters.

Event of Default means each event or occurrence described in clause 12.1 or elsewhere in this Lease as an Event of Default.

Expert Determination Process means the process and procedure for expert determination of disputes arising under clause 9.3 "Tenant's payment in lieu of Make Good" as set out in Annexure K.

Final Period means the period from and including the 1st day of July immediately preceding Termination up to the date of Termination.

Fire Fighting Equipment means all stop-cocks, hydrants, alarms, drench curtains, fire sprinkler systems, hoses, extinguishers or other fire prevention equipment in or serving the Premises.

Food and Beverage Facilities means the food and beverage facilities situated within the ground floor of the Building comprising the café, bar and kitchen.

Function Room means the multipurpose function room situated within the ground floor of the Building.

Further Term means the further term or terms (if any) specified in Item 12 of the Reference Schedule.

Greens Tearoom/Storeroom means that single storey building on the Land shown as the "Croquet building and stores" on the Premises Plan.

GST means a tax imposed on a Party under the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means the person specified in Item 3 of the Reference Schedule and that person's successors, personal representatives and assigns.

Hazard means anything occurring on or emanating from the Premises that may cause injury to a person or harm to the health of a person.

Hazardous Materials means any substance, gas, liquid, chemical, mineral or other physical or biological matter that is:

- (a) or may become toxic, flammable or inflammable;
- (b) otherwise dangerous, harmful to the environment or any life form or which may cause pollution, contamination or any hazard or increase in toxicity in the environment or may leak or discharge or otherwise cause damage to any person, property or the environment; or
- (c) a material or compound controlled, prohibited or regulated from time to time by any Environmental Law.

Health Club means that part of the first floor of the Building comprising the spin, gym and group fitness areas.

Insolvency Event means:

- (a) in the case of a body corporate:
 - (i) an order is made that the body corporate be wound up;
 - (ii) a liquidator or provisional liquidator of the body corporate is appointed, by court order or otherwise;
 - (iii) a meeting is convened or a resolution is passed to appoint an administrator of the body corporate;
 - (iv) the body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them, except if done to reconstruct or amalgamate while solvent;
 - (v) the body corporate proposes to or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors without the consent of the Landlord;
 - (vi) a resolution is passed to wind up or dissolve the body corporate;
 - (vii) the body corporate is dissolved;
 - (viii) the body corporate is insolvent under s 95A(2) of the Corporations Act;
 - (ix) any event mentioned in ss 459C(2)(a)-(f) of the Corporations Act occurs in respect of the body corporate;

- (x) the appointment of an administrator or a controller, as defined by the Corporations Act, in respect of the body corporate, or the appointment of a receiver, manager, or receiver and manager of the whole or part of the assets and undertaking of the body corporate; or
 - (xi) an event occurs in relation to the body corporate which has a substantially similar effect as an event listed in this clause under the Law of any applicable jurisdiction; and
- (b) in the case of an individual:
- (i) the person proposes or enters into an arrangement or composition with a creditor;
 - (ii) the person proposes or enters into an assignment for the benefit of one or more creditors;
 - (iii) the individual commits an act of bankruptcy under the *Bankruptcy Act 1966* (Cth); or
 - (iv) anything occurs in relation to the individual which has a substantially similar effect to any of the things listed in this cause under the Law of any applicable jurisdiction.

Insurable Risks means any one or more of the risk of:

- (a) loss or damage to the Premises from all insurable causes; and
- (b) any other risk related to the Landlord's interest in the Premises.

Insurance Premiums means the premiums for all insurance effected by the Landlord for the Insurable Risks.

Insured Amount means the amount specified in Item 10 of the Reference Schedule.

Kiosk and Amenities Building means the kiosk and amenities building on the Land identified as "Amenities" in the Premises Plan.

Land means the land specified in Item 4 of the Reference Schedule.

Landlord means the person specified in Item 1 of the Reference Schedule and that person's successors, executors, administrators, assigns and transferees and includes the person entitled to possession of the Premises at Termination.

Landlord's Assets means those items of the Landlord's Property that may be subject to the PPSA.

Landlord's Property means the fixtures, fittings, furniture, chattels, plant and equipment belonging to the Landlord from time to time located or contained in the Premises, including floor coverings and window treatments.

Laws means all statutes, rules, regulations, proclamations, ordinances or by-laws present or future of the State and, where applicable, the Commonwealth, and any amendment or re-enactment of them for the time being in force.

Lease means this deed as amended, varied or supplemented from time to time including any schedule or annexure, however it is not limited to the legal estate created on registration but also includes any tenancy or other right whether legal, equitable or otherwise under which the Tenant occupies or is entitled to occupy the Premises, including a tenancy for a fixed term, a periodic tenancy or a tenancy at will.

Lease Year means:

- (a) the Preliminary Period;
- (b) each consecutive period of 12 months from and including the 1st day of July in each year during the Term; and
- (c) the Final Period.

Licensing Authority means, as the case requires, the Liquor Commission or the Director of Liquor Licensing, as constituted or appointed under the Liquor Act.

Liquor Act means the *Liquor Control Act* 1988.

Liquor Licence means the liquor licence issued under the Liquor Act in respect of the Premises.

Local Government Laws means any statute, rule, regulation, proclamation, ordinance, scheme or by-law present or future of Western Australia and, where applicable, the Commonwealth, and any amendment or re-enactment of them for the time being in force, which confers any responsibility, function, duty, obligation or right on any local government established under the *Local Government Act* 1995 (WA).

Managing Agent means any person appointed to manage the Premises under clause 21.11.

month means a calendar month.

NABERS means the National Australian Built Environment Rating System, being the national initiative managed by the New South Wales Office of Environment and Heritage.

Operator means the person named as “Operator” under the Operator Agreement.

Operator Agreement means the agreement dated _____ made between the Landlord as “the Town of East Fremantle” and the Tenant as “Operator” for the operation and management of the sporting, leisure and community facilities that comprise the Premises.

OSH Incident means:

- (a) an actual or suspected breach of any requirement under OSH Legislation by the Landlord, the Tenant or any Permitted Person;

- (b) an incidence of personal injury or harm caused to a person at the Premises;
- (c) an event that gives rise to a risk to the safety and health of a person, whether or not that event must be reported under OSH Legislation;
- (d) the issue of any notice or direction by an authorised person under the OSH Legislation to the Landlord, the Tenant or any Permitted Person which directly or indirectly relates to the use of the Premises; and
- (e) the commencement of any inquiry or investigation undertaken by an authorised person under the OSH Legislation which directly or indirectly relates to the use of the Premises.

OSH Legislation means all Laws regarding work health and safety that apply to the Premises from time to time, including:

- (a) all Australian Standards or Codes of Practice referred to or made under those work health and safety Laws; and
- (b) all licenses, terms or conditions issued to or imposed on the Landlord, the Tenant or any Permitted Person by an Authority under those work health and safety Laws.

Oval means the 165m x 130m (plus 5m runoff) Australian Rules Football oval situated within the Premises and identified as "Oval" on the Premises Plan.

Party means the Landlord, the Tenant or the Guarantor according to the context.

Permitted Person means the Tenant's employees, agents, contractors, customers, invitees, licensees or visitors, including the employees and sub-contractors of the Tenant's agents and contractors.

Permitted Use means the use specified in Item 11 of the Reference Schedule.

Perth CBD means the area in or adjoining the City of Perth bounded by Riverside Drive, the Mitchell Freeway, Roe Street, Fitzgerald Street, Newcastle Street, Lord Street, Wellington Street and Plain Street, including both sides of each street or road.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Preliminary Period means the period commencing at midnight on the day preceding the Commencement Date and expiring at midnight on the next 30 June.

Premises means the premises described in Item 5 of the Reference Schedule and includes the Building and all other buildings and improvements on the Premises, the Building Services and the Landlord's Property.

Premises Plan means the premises plan annexed as Annexure A.

Rates and Taxes means the aggregate in each Lease Year of the rates, taxes, charges or impositions levied, charged or assessed in relation to the Premises, the Building, the Land, or the ownership or occupation of them, including:

- (a) council rates and charges payable to the relevant Authority including charges for rubbish removal;
- (b) water, drainage and sewerage rates payable to the relevant Authority for the supply of water including meter fees and charges for the disposal of storm water and sewerage;
- (c) charges for water consumption;
- (d) State and Commonwealth land tax and charges;
- (e) Metropolitan Region Improvement Tax and any other region improvement tax;
- (f) car parking fees, charges, taxes, levies and impositions; and
- (g) any other rate, tax or imposition.

Rent means the amount specified in Item 8 of the Reference Schedule as is reviewed in accordance with the rent review provisions of this Lease.

Requirement means a condition of approval or consent, requirement, notice, order or direction of any Authority.

Security Interest has the meaning given to that term in the PPSA.

Services means all utilities and services supplied to or in the Premises including gas, sewerage, water, drainage, electricity, waste removal, telecommunications, internet and data transmission services.

State means the state of Western Australia.

Tenant means the person specified in Item 2 of the Reference Schedule and that person's successors, executors, administrators and permitted assigns and, where not contrary to the context, includes any sublessee.

Tenant's Insurer means an insurance company:

- (a) authorised to carry on business under the *Insurance Act 1973* (Cth); and
- (b) that has a Standard and Poors AAA rating.

Tenant's Obligations means the several obligations contained or implied in this Lease, which the Tenant must observe and perform.

Term means the term of this Lease specified in Item 7 of the Reference Schedule and where the context permits includes any Further Term, any other renewal of this Lease and any period of holding over.

Termination means the expiry by passage of time or the sooner determination of the Term or any Further Term.

Venue Capacity Table means the table annexed to this Lease as Annexure L.

Works Conditions means that:

- (a) the works must be performed:
 - (i) at the Tenant's cost (including the Landlord's reasonable costs incurred in connection with the works, which include the Landlord's reasonable administrative and other reasonable costs of giving consent, and the reasonable fees of any architect or other consultant used by the Landlord in connection with the works) subject to the provisions of the Operator Agreement (if applicable);
 - (ii) in a proper and workmanlike manner, in accordance with all relevant Australian standards and to the satisfaction of the Landlord, acting reasonably;
 - (iii) by a contractor:
 - A. nominated by the Tenant and approved by the Landlord, acting reasonably; and
 - B. who has provided evidence to the Landlord that it carries an insurance policy or policies covering public liability with a level of cover acceptable to the Landlord and appropriate contract construction risk, workers compensation and other usual insurances, which note the interest of the Landlord;
 - (iv) under the supervision of a person nominated by the Tenant and approved by the Landlord, acting reasonably;
 - (v) in accordance with all Laws and Requirements;
 - (vi) in accordance with plans and specifications approved by the Landlord (which approval must not be unreasonably withheld) and subject to any conditions that the Landlord imposes on its consent (which conditions (if any) must be reasonable);
 - (vii) in accordance with and only after obtaining the approvals of all relevant Authorities;
 - (viii) only after providing copies to the Landlord of all approvals from relevant Authorities in relation to the works before carrying out the works; and
 - (ix) in accordance with the then current fitout manual (if any) for the Premises; and
- (b) once the works are complete the Tenant must:
 - (i) provide as-built drawings for the Premises layout and services to the Landlord; and

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- (ii) provide copies of all certificates of compliance from relevant Authorities in relation to the works within a reasonable period as nominated by the Landlord (but in any event within 40 Business Days after completion) to the Landlord.

1.2 Interpretation

- (a) This interpretation clause applies unless inconsistent with the context.
- (b) The headings and an index have been inserted for convenience only and do not affect the interpretation of this Lease.
- (c) If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
- (d) The singular includes the plural and vice versa.
- (e) A reference to a gender includes any gender.
- (f) A reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this Lease.
- (g) A reference to this Lease includes an annexure.
- (h) The word *includes* and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this Lease.
- (i) A reference to a document includes a variation or replacement of it.
- (j) A reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.
- (k) A reference to *person* includes a reference to:
 - (i) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity;
 - (ii) if the person is an individual, the person's personal representatives and assigns; and
 - (iii) if the person is not an individual, the person's successors and assigns.
- (l) A reference to a thing, including a right, is a reference to either the whole thing or a part of the thing.
- (m) Part performance of an obligation does not constitute performance of an obligation.
- (n) An agreement, representation or term of this Lease in favour of or on the part of two or more people benefits or binds them jointly and severally.
- (o) Subject to context, a reference in the GST clause to a term defined or used in the GST Act has the meaning given to that term in the GST Act.

- (p) A reference to currency is to the Australian currency.
- (q) A reference to time is to Perth, Western Australia time.
- (r) if the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
- (s) A reference to a day is a reference to the period which starts at midnight and ends 24 hours later.
- (t) If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.
- (u) The Tenant's Obligations are binding on and enforceable against the Tenant and any occupier of the Premises.
- (v) If an organisation or rating tool no longer exists or is no longer relevant, then:
 - (i) a reference to that organisation or rating tool is a reference to its successor or replacement; or
 - (ii) if there is no successor or replacement, then it is a reference to the organisation or rating tool that the Landlord considers most appropriate.
- (w) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Lease or any part of it.

1.3 Local Government Laws prevail

In the event of any inconsistency between:

- (a) an obligation, right or power of either the Tenant or the Landlord under this Lease; and
- (b) an obligation, right or power under the Local Government Laws,

then the obligation, right or power of the Landlord under the Local Government Laws prevails.

1.4 No fetter

Nothing in or arising out of this Lease in any way:

- (a) diminishes the Landlord's rights and powers; or
 - (b) fetters any discretion that the Landlord has,
- under the Local Government Laws.

1.5 Committee

- (a) The Tenant acknowledges and agrees that:

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- (i) the Landlord may delegate all or any of its rights and decision making powers under this Lease and all of its obligations under this Lease to a committee established under section 5.9(2)(c) of the LG Act (**Committee**);
 - (ii) by way of example only, the composition of the Committee may initially comprise the following members:
 - A. one independent chairperson;
 - B. at least two representatives from the Landlord (being either employees or elected members of the Landlord);
 - C. one representative of EFFC;
 - D. one representative of EFBC;
 - E. one representative of EFCC;
 - F. one local resident from the Landlord's district; and
 - G. one representative of the Tenant (non-voting member); and
 - (iii) the Landlord may, in its sole and absolute discretion, revoke in full or in part the delegation of any of its rights, decision making powers and obligations to the Committee.
- (b) The Landlord must give notice to the Operator of any delegation made under clause 1.5(a)(i) or any revocation of that delegation under clause 1.5(a)(iii).

1.6 Inconsistency with Operator Agreement

In the event of any inconsistency between the provisions of this Lease and the provisions of the Operator Agreement, the provisions of the Operator Agreement will prevail.

2. Grant and term

2.1 Grant

The Landlord leases the Premises to the Tenant and the Tenant takes a lease of the Premises:

- (a) for the Term;
- (b) at the Rent;
- (c) subject to the terms of this Lease; and
- (d) subject to the Encumbrances.

2.2 Commencement Date

This Lease commences on the Commencement Date.

3. Rent

3.1 Rent

The Tenant must pay the Rent to the Landlord, or as otherwise directed in writing, during the Term and otherwise so long as the Tenant remains or is entitled to remain in possession of the Premises.

3.2 Payment of Rent

- (a) The Rent is payable annually in advance, with the first payment to be made on the Commencement Date and subsequent payments to be made on the anniversary of the Commencement Date in each Lease Year.
- (b) The Rent must be paid:
 - (i) without any deduction or set-off, whether arising at Law or in equity;
 - (ii) subject to clause 3.2(b)(iii), to the Landlord at its address stated in this Lease or at any other address as may be notified in writing to the Tenant; and
 - (iii) if requested by the Landlord, by direct debit from the Tenant's bank account into a bank account nominated by the Landlord.

4. Other payments

4.1 Rates and Taxes

- (a) The Tenant must pay all Rates and Taxes payable in respect of the Premises, or the occupation and ownership of the Premises in each Lease Year to the Authority (or the Landlord if so directed by the Landlord) on or before the date required by the Authority.
- (b) If no separate Assessment issues for the Premises the Tenant must pay to the Landlord on demand the same proportion of the Assessment, as the area of the Premises bears to the area the subject of the Assessment, as certified and determined by the Landlord, whose certificate and determination in the absence of manifest error will be final and binding on the Tenant.
- (c) The Tenant's portion of Rates and Taxes for the Preliminary Period and the Final Period will be apportioned on a daily basis in respect of periods less than 12 months

4.2 Services

- (a) The Tenant must pay to the relevant Authority when due all charges and meter rentals for all Services consumed on or for the Premises and electricity consumed by any air conditioning plant used for the Premises.

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- (b) The Landlord may, at any time during the Term, give a notice to the Tenant requiring the Tenant to purchase electricity consumed on the Premises from the Landlord or its nominee.
 - (c) If the Landlord gives notice to the Tenant under clause 4.2(b):
 - (i) the Tenant must purchase electricity consumed on the Premises from the Landlord or the Landlord's nominee specified in the notice; and
 - (ii) the Tenant will be charged for electricity consumed on the Premises purchased from the Landlord or its nominee at the rate incurred by the Landlord or its nominee (without any mark-up by the Landlord or its nominee).
 - (d) Despite any other term of this Lease, the Landlord will not be liable to the Tenant for any failure (either total or partial) in the supply of Services resulting from:
 - (i) failure of the relevant Authority to supply the Services to the Landlord or the Tenant except to the extent that failure is due to the Landlord's default;
 - (ii) war, riot, Act of God, force majeure or accident or interference with or breakdown from a cause arising in any part of the relevant Authority's or the Landlord's installations or equipment in respect of such Services; or
 - (iii) wrongful or improper use of any Services by the Tenant; or
 - (iv) any other cause beyond the Landlord's reasonable control.

4.3 Insurance

On or before the date specified by the Tenant's Insurer, the Tenant must pay to the Tenant's Insurer the premiums owing for the insurance policies required to be taken out and maintained by the Tenant under this Lease.

4.4 Legal costs

- (a) Each Party will bear their own costs in relation to the preparation, negotiation, amendment, variation and execution of this Lease.
- (b) The Landlord will pay the costs and disbursements relating to:
 - (i) the registration of this Lease; and
 - (ii) the preparation of any deposited or survey plan or premises plan.

4.5 Charges and expenses arising through default etc.

The Tenant must pay to the Landlord on demand all legal and Managing Agents' and other costs, charges and expenses for which the Landlord is liable in connection with:

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- (a) any Event of Default by the Tenant including all costs, charges and expenses, solicitors costs and surveyors fees incurred by the Landlord for the purpose of the preparation and service of a notice under section 81 of the *Property Law Act 1969* (WA) or otherwise and requiring the Tenant to remedy an Event of Default and even if forfeiture for the Event of Default is avoided otherwise than by relief granted by a court;
 - (b) the exercise or attempted exercise of any power, right or remedy of the Landlord under this Lease arising from any Event of Default by the Tenant;
 - (c) obtaining or attempting to obtain payment of the Rent or any other money payable under this Lease; and
 - (d) any Claim concerned with any matter referred to above or any other matter in connection with this Lease, including legal costs and disbursements calculated on the greater of a solicitor and own client basis or an indemnity basis, which the Landlord has paid or pays to any other person provided they are of a reasonable amount and have been reasonably incurred.

4.6 Interest on arrears

If the Tenant fails to make any payment to the Landlord which is required under this Lease, the Tenant must pay interest to the Landlord on the outstanding money at the Default Rate calculated daily on the money from the due date for payment until actual payment of the outstanding payment and interest on it.

4.7 GST liability

- (a) Subject to an express clause to the contrary, an amount referred to in this Lease which is relevant in determining a payment that one Party must make to another Party is exclusive of GST.
- (b) The Parties agree that:
 - (i) GST is payable in respect of any taxable supply made under this Lease;
 - (ii) in respect of any taxable supply made under this Lease, the recipient must pay to the supplier the amount equal to the GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under this Lease;
 - (iii) the GST liability for any taxable supply is:
 - A. where the consideration is exclusive of GST, the amount equal to the rate of GST multiplied by the consideration attributable to the taxable supply made by the supplier to the recipient; or
 - B. where the consideration is inclusive of GST, the amount determined in accordance with the GST Act;
 - (iv) if a Party is entitled to be reimbursed for an expense or outgoing incurred in relation to this Lease, the amount of the reimbursement will be net of any input tax credits which may be claimed by the Party being

reimbursed, or the representative member of the GST group in which that Party is a member in relation to that expense or outgoing;

- (v) the supplier must issue:
 - A. a tax invoice to the recipient of any taxable supply in respect of that taxable supply; and
 - B. any relevant adjustment note to the recipient of a taxable supply for an adjustment that arises from an adjustment event relating to that taxable supply; and
- (vi) if there is an adjustment to the consideration payable for a taxable supply which gives rise to an adjustment event, then:
 - A. the Parties must recalculate the GST liability for that taxable supply based on the adjusted consideration;
 - B. the Parties must recalculate the amount in the manner set out in this clause; and
 - C. a Party must make an appropriate payment on account of an adjusted GST liability.

5. Indemnity and insurance provisions

5.1 Tenant's indemnity

- (a) Except to the extent caused by any act, neglect, default or omission of the Landlord, or its agents, contractors or employees, the Tenant indemnifies the Landlord and the Minister for Lands against all Claims, including legal and investigative costs and expenses, which the Landlord and the Minister for Lands may incur in connection with the loss of life, or personal injury, or damage to any property (wheresoever occurring) arising out of any occurrence at the Premises or the use by the Tenant of the Premises to the extent caused or contributed to by any act, neglect, default or omission by the Tenant or by a Permitted Person or by any other person on the Premises, with the Tenant's express or implied consent.
- (b) The Tenant indemnifies the Landlord and the Minister for Lands against all loss and damage to the Premises caused by the negligent use or misuse, waste or abuse of water, gas or electricity supplied to the Premises or to the Tenant in connection with the Premises or the use of the Premises or by faulty sanitary, water, gas or electric pipes, wire, fittings or fixtures fixed or installed in the Premises by the Tenant or by a Permitted Person, except to the extent that such loss or damage is caused by any act, neglect, default or omission of the Landlord, or its agents, contractors or employees.
- (c) To the extent permitted by Law, the Tenant indemnifies the Landlord and the Minister for Lands from and against all Claims, including legal and investigative costs and expenses, relating to any:
 - (i) loss (including loss of use), injury or damage of or to any property;

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- (ii) death or illness of or injury to any person; or
 - (iii) any inquiry, investigation, notice, direction, order, proceeding or prosecution instituted under or in relation to the OSH Legislation or the *Coroners Act 1996* (WA),

caused by, arising out of, or in connection with the Tenant's or a Permitted Person's use of the Premises, except to the extent that such Claims are caused by any act, neglect, default or omission of the Landlord, or its agents, contractors or employees.

5.2 Indemnity insurance policy

The Tenant must, before the Commencement Date, take out and at all times keep in force with the Tenant's Insurer, on behalf of the Tenant and naming the Landlord as an "interested party" under such policy, a public liability policy on a "losses occurring basis" with a cover for any one occurrence of not less than the Insured Amount or a greater amount as the Landlord may reasonably require.

5.3 Insurance against fire and other risks

- (a) The Tenant must, before the Commencement Date, take out and at all times keep in force to the satisfaction of the Landlord with the Tenant's Insurer, on behalf of the Tenant and naming the Landlord as an "interested party" under such policy:
 - (i) a policy of insurance to cover all additions to the Premises carried out by the Tenant and all the Tenant's fixtures, fittings, equipment and furnishings and stock against loss or damage by fire, fusion, explosion, smoke, lightning, flood, storm, tempest, rainwater, earthquake, riot, civil commotion, malicious damage, impact by vehicles, sprinkler leakage, water damage, aircraft and articles dropped from aircraft and other risks against which, in the opinion of the Landlord, a tenant may and does ordinarily insure, in the full replacement value; and
 - (ii) a policy of employer's indemnity insurance; and
 - (iii) insurances which are required by Law, or which are from time to time specified in writing to the Tenant as being, in the Landlord's reasonable opinion, policies of insurance which a prudent tenant should take out.
- (b) In case of destruction of, or damage to, any property referred to in clause 5.3(a) from any cause covered by the insurance effected by the Tenant under clause 5.3(a) the Tenant must expend all money received from the insurance in re-instating or replacing it and make up any deficiency out of the revenue collected by the Tenant under the Operator Agreement or the Tenant's own money (if there is insufficient revenue collected by the Tenant to meet the deficiency) with the Tenant to be reimbursed in accordance with clause 16 of the Operator Agreement.
- (c) To secure the Tenant's obligations under clause 5.3(b), the Tenant must deposit all money received from the insurance in an ADI account separate to any other account operated by the Tenant and hold that money on trust for the

Landlord. The Tenant grants to the Landlord a Security Interest in the ADI account and the debt owed to the Tenant by the ADI to secure the Tenant's Obligations under this clause.

- (d) The Tenant acknowledges and agrees that in relation to any claim the Tenant makes on any policy of insurance the Tenant is required to maintain under this Lease, regardless of:
- (i) whether the Tenant's insurance policies respond or not; and
 - (ii) the reason why the insurance policies respond or fail to respond,
- the Tenant is not released (in whole or in part), from any of its obligations under any of the indemnities set out in this Lease, or generally.

5.4 Landlord's rights

If the Tenant does not take out and keep in force any insurance policy it is required to maintain under this Lease, then the Tenant:

- (a) irrevocably appoints the Landlord its attorney to do all things and sign all documents necessary to give effect to the Tenant's insurance obligations at the Tenant's cost; and
- (b) assigns to the Landlord all its rights and benefits under any insurance policy, including the right to any money received by the Tenant, to secure the Tenant's insurance obligations under clauses 5.2 and 5.3.

5.5 Group Insurance Policy

The Tenant may satisfy each of its insurance obligations under clauses 5.2 and 5.3 by taking out insurance under its company group policy of insurance provided:

- (a) the Tenant satisfies the Landlord that:
 - (i) the group insurance policy includes insurance cover for those risks for which the Tenant is required to insure against under this Lease and the level of cover is not less than that required by the provisions of this Lease; and
 - (ii) the Landlord and the Tenant are covered by and are entitled to access the group policy of insurance to the same extent as if the Tenant had taken out and maintained separate policies of insurance as otherwise required by clauses 5.2 and 5.3; and
- (b) the Tenant otherwise complies with its obligations under this clause 5, including producing certificates of currency in accordance with clause 5.7 of this Lease.

5.6 Landlord's insurances

- (a) The Landlord may take out and maintain in respect of the Premises insurance policies relating to those Insurable Risks determined necessary by the Landlord and must provide the Tenant with reasonable evidence of compliance with this

obligation within 30 days after demand. For the avoidance of doubt the Landlord has no obligation to take out any policy of insurance in relation to the Premises.

- (b) The Tenant acknowledges and agrees that the Insurance Premiums are payable by the Tenant (in its capacity as “Operator” under the Operator Agreement) as part of the expenditure incurred by the Tenant in operating and managing the Premises.

5.7 Produce certificates of currency

Before the Commencement Date, the Tenant must produce to the Landlord certificates of currency issued by the Tenant’s Insurer and at any time on demand during the Term produce updated certificates of currency for them.

5.8 Increase in Landlord’s fire insurance premium

- (a) The Tenant must not bring onto or keep in the Premises anything of a flammable, dangerous or hazardous nature and not without the written consent of the Landlord bring onto or keep anything or do any act in the Premises which may increase the rate of the Insurance Premiums.
- (b) If the Tenant or a Permitted Person brings onto or keeps in the Premises anything of the nature described in clause 5.8(a) or does any such act in the Premises, then without limiting any other rights of the Landlord, the Tenant must, on demand, pay to the Landlord the amount of any increased Insurance Premium.
- (c) If the Tenant or a Permitted Person does or permits to be done any act which has the effect of invalidating or avoiding any insurance policy taken out by the Landlord, then without limiting any other right of the Landlord, the Tenant will be responsible for, and must pay on demand, any damage or loss which the Landlord suffers as a result.

6. Repair and maintenance by Tenant

6.1 Repair and maintain

- (a) The Tenant must at the Tenant’s own expense repair, maintain and keep the Premises, the Landlord’s Property and the Tenant’s fixtures, fittings, equipment and furnishings:
 - (i) in good and substantial repair, order and condition; and
 - (ii) so that they remain in at least the same condition as at the Commencement Date.
- (b) The obligations under clause 7.1(a) extend to and must be in accordance with all repairs and maintenance that the Tenant is required to undertake as Operator under the Operator Agreement.

6.2 Clean

The Tenant must keep the Premises and immediate surroundings in a thorough state of cleanliness and in a condition that is in accordance with the Tenant's obligations as Operator under the Operator Agreement.

6.3 Landlord's right to view

The Tenant must allow the Landlord, its employees, agents and independent contractors to enter the Premises at all reasonable times and on reasonable notice to view the Premises.

6.4 Landlord's right to repair

- (a) If the Tenant fails to remedy any Event of Default as to the Tenant's obligations in this clause 6 (**R&M Obligation**) within 10 Business Days after the date of service of a notice on the Tenant requiring the Tenant to remedy the Event of Default, the Tenant must allow the Landlord, its employees, agents and independent contractors (but the Landlord is not under any obligation to do so) to enter the Premises at any time with all necessary materials and appliances and to execute all or any required repairs or maintenance as the Landlord thinks fit and pay to the Landlord on demand the cost of the repairs or maintenance.
- (b) Even if there is no Event of Default as to the R&M Obligation the Landlord may by notice to the Tenant elect to perform an R&M Obligation. If the Landlord does so elect then the Landlord may recover the cost of the R&M Obligation from the Tenant on demand.

6.5 Landlord's right to carry out emergency repair

- (a) In addition to the rights of the Landlord to enter after notice to the Tenant, the Tenant must allow the Landlord and the Landlord's employees, agents and independent contractors to enter the Premises at all times with all necessary materials and equipment and without previous notice to carry out any repairs which in the Landlord's opinion are of an emergency nature.
- (b) If the Landlord carries out any repairs under this power which should under the Tenant's Obligations be carried out by the Tenant, then the Tenant must pay to the Landlord on demand the cost of the repairs.

6.6 Notice of damage

As soon as the Tenant becomes aware of any accident to, defect in or damage to the Premises it must notify the Landlord in writing.

6.7 Landlord's Property

At the Tenant's expense, the Tenant must ensure that:

- (a) the Landlord's Property is safe for its intended use and is adequately serviced, inspected and maintained throughout the Term;

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- (b) the Landlord's Property is used only by people who are competent to use it and who hold all necessary licences and qualifications required; and
 - (c) promptly after completion it provides records of all repairs, maintenance and modification carried out on the Landlord's Property.

7. Tenant's use of premises

7.1 Alterations to the Premises

The Tenant must not:

- (a) make any alterations, modifications, improvements or additions to the Premises;
- (b) erect or install any signage (other than signage on the oval perimeter fence required and authorised by EFFC); or
- (c) interfere with, alter or make any connection to the Building Services and the Landlord's Property,

unless the Tenant:

- (d) obtains the Landlord's prior written consent, which:
 - (i) may be granted or withheld at the Landlord's discretion; and
 - (ii) may be given conditionally or unconditionally in all cases; and
- (e) in undertaking any works, complies with the Works Conditions.

7.2 Comply with Laws and requirements

- (a) The Tenant must use the Premises only for lawful purposes.
- (b) The Tenant must:
 - (i) only use the Premises in a manner that is consistent with the reserve purpose for the Land;
 - (ii) comply with the terms of any management order that applies to the land; and
 - (iii) not do anything that would result in the Landlord being in breach of any reserve purpose or management order that applies to the Land or any provision of the *Land Administration Act 1997*.
- (c) The Tenant must punctually comply with and observe at the Tenant's expense all present and future Laws and Requirements which relate to:
 - (i) the Premises;
 - (ii) the use of the Premises (other than in relation to structural matters);

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- (iii) the number or sex of the people working in or from or at any time occupying or visiting the Premises; or
 - (iv) any notice requiring the carrying out of any repairs, maintenance or alterations to or the provision of Fire Fighting Equipment for the Premises.
- (d) All works which the Tenant is required to carry out under this clause must be carried out in accordance with the Works Conditions.
- (e) If the Tenant does not comply with the requirements of clauses 7.2(a) to (d), the Tenant must:
- (i) allow the Landlord and the employees, agents and independent contractors of the Landlord to enter the Premises at any time with all necessary materials and appliances for the purpose of complying with the Tenant's Obligations under this clause;
 - (ii) pay to the Landlord on demand any expense incurred by the Landlord in doing so; and
 - (iii) indemnify the Landlord against any loss or liability incurred by the Landlord arising from the non-compliance.

7.3 Comply with Managing Agent

The Tenant must comply with any reasonable direction, order or request of the Landlord or the Managing Agent (if applicable).

7.4 Tenant's Operational Obligations

The Tenant must during its occupation of the Premises:

- (a) advise the Landlord (or where applicable its Managing Agent) of the private address and telephone number of the Tenant, or if the Tenant is a body corporate of the manager or other responsible person employed by the Tenant, and must keep the Landlord or its Managing Agent informed of any change of this address or telephone number;
- (b) secure the Premises against unauthorised entry at all times when the Premises are left unoccupied; and
- (c) not do anything by which the work or efficiency of the air conditioning plant servicing the Premises may be detrimentally affected.

7.5 Restrictions on use of Premises by Tenant

- (a) The Tenant must not:
 - (i) smoke tobacco or any other substance or use e-cigarettes, vaporisers or other electronic smoking implements, and the Tenant must ensure that no Permitted Person:

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- A. smokes tobacco or any other substance; or
 - B. uses e-cigarettes, vaporisers and any other electronic smoking implements,
in any part of the Premises except in designated smoking areas;
- (ii) permit the sale of tobacco products, e-cigarettes, vaporisers and any other electronic smoking implements within any part of the Premises;
 - (iii) use or permit to be used any of the Landlord's Property or Building Services other than for their designed purposes;
 - (iv) sell any of the Landlord's Property;
 - (v) grant or allow to arise any Security Interest in the Landlord's Property;
 - (vi) do anything on the Premises which in the reasonable opinion of the Landlord maybe illegal, immoral, noisy, noxious or offensive or may become a nuisance or disturbance, obstruction or cause of damage whether to the Landlord or to other owners, occupiers, tenants or users of land in the vicinity of the Premises;
 - (vii) install anything in or on the Premises that overloads the Building Services or other cables, switchboards, circuits or sub-boards through which electricity is conveyed to or through the Premises;
 - (viii) do or permit anything to be done on the Premises which in the reasonable opinion of the Landlord will result in noise or behaviour that will have an adverse impact on the amenity of nearby residents;
 - (ix) sleep at the Premises;
 - (x) burn any rubbish or waste at the Premises;
 - (xi) keep any animal or bird at the Premises; or
 - (xii) permit another person to do any of these things.
- (b) This clause 7.5 does not prohibit activities within the Premises which are Permitted Uses and which generate a normal amount of vehicular or pedestrian traffic congestion in and around the Premises, or normal levels of amplified sound or crowd noise when compared with other comparably sized community, sport and leisure precincts.
 - (c) The Tenant acknowledges and agrees that the capacity limits for each of the following facilities within the Premises as at the Commencement Date are as set out in the Venue Capacity Table:
 - (i) the Function Room, Food and Beverage Facilities and commercial tenancy space on the ground floor building;
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- (ii) the home and away player changerooms on the ground floor of the Building;
 - (iii) the Health Club and external deck area of the first floor of the Building;
 - (iv) the office and administration area on the first floor of the Building;
 - (v) the Greens Tearoom/Storeroom;
 - (vi) the Oval, Croquet Courts, Bowling Greens, grandstand section of the Building and the outdoor playground; and
 - (vii) the Kiosk and Amenities Building, skate zone and basketball court.
- (d) The Tenant acknowledges and agrees that any increase to the capacity limits as set out in the Venue Capacity Table for all or any of the facilities within the Premises (whether on a temporary or permanent basis) will require the Tenant to first obtain:
- (i) the prior written consent of the Landlord; and
 - (ii) all consents, approvals, authorisations, licences and permits required under Law for such increase from each relevant Approving Authority.

7.6 Floor and hardstand overloading

The Tenant must not:

- (a) install or place in the Premises any item, fixture or fitting which breaks, cracks, strains, overloads or damage any part of the Premises including any floor, wall or pillar of any building and any hardstand or any other constructed surface within the Premises;
- (b) do any act or thing which might result in overloading any part of the floor of any building and any hardstand or any other constructed surface within the Premises; or
- (c) damage any part of the floor of any building and any hardstand or any other constructed surface within the Premises;
- (d) for the purpose of this clause, "overloading" means:
 - (i) if any load factors have been specified in any plans and specifications for any area forming part of the Premises any load in excess of those specifications; or
 - (ii) in any other case, any load or loads likely, in the reasonable opinion of the Landlord, to cause any cracking or long term deterioration to the surface finish of that area; and
- (e) if the Landlord identifies any business practice of the Tenant such as use of heavy loading equipment or the receipt or despatch of heavy containers or plant

and equipment, the Landlord may give written notice requiring the Tenant to cease that practice, in addition to any rights it may have arising from any breach by the Tenant or any damage caused by the overloading.

7.7 Use of Premises

- (a) The Tenant must only use the Premises for the Permitted Use and for no other use or purpose, and it must occupy and keep the Premises open for those uses specified as compulsory uses in clause 7.7(b) during the Term.
- (b) The Tenant acknowledges and agrees that the uses specified in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l) and (m) of Item 11 of the Reference Schedule must be provided from the Premises at all times during the Term.

7.8 NABERS Rating & Energy Efficiency

- (a) The Tenant acknowledges and agrees that the Landlord may operate the Building and the Premises in a manner which improves the energy efficiency of the Premises.
- (b) The Tenant must:
 - (i) comply with all reasonable requests made by the Managing Agent or the Landlord in relation to the energy efficiency of the Building and maintain the NABERS rating of the Building
 - (ii) use its reasonable endeavours to assist the Landlord in its initiatives to reduce energy and water consumption and waste by using the Services, the Building and the Premises in an efficient manner;
 - (iii) use the Premises in a manner which complies with the sustainability criteria for the Premises as specified by the Landlord from time to time;
 - (iv) use its reasonable endeavours to ensure that its fitout design and equipment selection minimises energy and water consumption in the Premises;
 - (v) not do or omit to do anything which has, or may have a detrimental effect on the NABERS rating or the energy efficiency of the Premises or permit another person from doing so;
 - (vi) not restrict or impede the Landlord from carrying out any works required to be conducted to maintain the NABERS rating or general energy efficiency of the Building and must not make any Claims as a result of the Landlord carrying out such works, even if the works affect the Tenant's use or enjoyment of the Premises; and
 - (vii) provide the Landlord (or where applicable its Managing Agent) with any information that the Landlord requires in order to obtain an annual NABERS rating for the Premises and an annual BEEC and to comply with the Landlord's obligations under the *Building Energy Efficiency Disclosure Act 2010* (Cth).

7.9 Security threats

The Tenant must:

- (a) promptly notify the Landlord or the Managing Agent if the Tenant or a Permitted Person receives any threat or demand which relates to the Premises, or to the safety of any person or property within the Premises;
- (b) be familiar with and comply with, and ensure each Permitted Person is familiar with and complies with the Landlord's emergency evacuation procedures (if any), including any requirement for people at the Premises to participate in emergency evacuation procedures and drills;
- (c) obey and cause each Permitted Person to obey any reasonable direction given by the Landlord or the Managing Agent relating to the control of people within the Premises and the evacuation or closure of any part of the Premises, following the giving to any person of a threat or demand of the kind referred to in this clause, or in the event of any fire earthquake or other emergency and for practice exercises of any emergency; and
- (d) if any civil defence, fire or evacuation drill is conducted in the Premises at any time, co-operate fully in the planning and control of and participation in them and to supply the Landlord with the names of the people responsible for carrying out all duties of civil defence planner and fire officer or warden in relation to the Premises and the person responsible on each floor level as applicable.

7.10 Security

The Tenant must:

- (a) use its best endeavours to protect and keep safe the Premises and any property in the Premises from theft or robbery and keep all doors windows and other openings closed and securely fastened when the Premises are not open for business; and
- (b) return to the Landlord on Termination all Access Cards and not permit the Access Cards to come into the possession of any person other than the Tenant or its employees or agents.

7.11 Occupational Safety and Health

- (a) From the earlier of the Commencement Date and the date on which the Tenant takes possession of the Premises, the Tenant has the day to day control of the Premises and must take all reasonable precautions to ensure the safety and health of each person who may be affected by the Premises and the Tenant's use of them.
- (b) The Tenant must, at all times during the Term:
 - (i) comply with its obligations under OSH Legislation;

- (ii) identify all Hazards and take all reasonable steps to maintain a safe working environment and to ensure the safety and health of each person who may be affected by the Tenant's use of the Premises, including any Permitted Person; and
 - (iii) assist the Landlord to comply with its obligations under OSH Legislation (if any).
- (c) The Tenant must:
 - (i) obtain an independent workplace safety, health and environment assessment of the Premises (**OSH Assessment**):
 - A. on or before the Commencement Date;
 - B. annually throughout the Term; and
 - C. whenever it introduces new plant or equipment into the Premises which has the potential to create a new Hazard;
 - (ii) provide a copy of each OSH Assessment to the Landlord; and
 - (iii) immediately take steps to eliminate or minimise any Hazards identified by an OSH Assessment and provide the Landlord with evidence of these steps.
- (d) The Tenant must immediately notify the Landlord of any Hazard which requires remediation by the Landlord.
- (e) Subject to the Landlord's express obligations under this Lease, the Tenant is responsible for the costs associated with rectifying any Hazard.
- (f) The Landlord may direct the Tenant to take any action or refrain from taking any action, on the grounds of workplace health and safety.
- (g) If an OSH Incident occurs, the Tenant must:
 - (i) immediately notify the Landlord of the OSH Incident;
 - (ii) ensure that no action is taken which may risk the safety and health of any person or damage the Premises;
 - (iii) do all things reasonably necessary to remedy and minimise the impact of the OSH Incident and to prevent a similar incident from recurring;
 - (iv) if requested by the Landlord:
 - A. conduct an investigation into the OSH Incident for the purpose of answering the Landlord's questions regarding the OSH Incident; and
 - B. provide to the Landlord the Tenant's written report expressly answering the Landlord's questions and recording all methods employed by the Tenant to obtain those answers;

- (v) if requested by the Landlord, provide all information, materials and samples relating to the OSH Incident to the Landlord;
- (vi) allow the Landlord access to the Premises to conduct its own investigation into the OSH Incident, including access to the Tenant's plant, equipment, goods and records;
- (vii) cooperate with the Landlord in relation to the OSH Incident and any resulting investigations or inspections conducted by any Authority;
- (viii) not disclose to any third party, so far as the Law permits, any information, documentation, reports or material that is owned or was created by the Landlord, unless expressly authorised by the Landlord in writing to do so; and
- (ix) comply with any lawful and reasonable directions given by the Landlord as a result of the OSH Incident.

7.12 Environmental Obligations

The Tenant:

- (a) must not cause or permit the release from or onto the Premises any pollutant, Contamination or Hazardous Material;
- (b) must comply, permit the Landlord to itself comply and ensure that all the Permitted Persons comply with all Environmental Laws which are applicable to the Premises, the Tenant or to the Tenant's use and occupation of the Premises;
- (c) must give notice to the Landlord on each occasion when the Tenant becomes aware that a breach of an Environmental Law has occurred in respect of the Premises;
- (d) must notify the Landlord immediately if the Tenant becomes aware of an event, occurrence or condition which obliges the Tenant to notify an Authority that harm to the environment or any life form has or may have occurred;
- (e) must, at the Tenant's cost, decontaminate by appropriate treatment, removal or otherwise any pollution, Contamination or Hazardous Materials introduced, caused or permitted to occur by the Tenant or the Permitted Persons and in accordance with the requirement of any relevant Authority carry out all investigative, remedial or decontamination action to the Premises and any land adjacent to the Premises as required by any Environmental Law and to the satisfaction of all relevant Authorities;
- (f) if requested by the Landlord, comply with the Landlord's environmental management system or environmental management plan for the Premises;
- (g) provide to the Landlord on demand a report on:
 - (i) the effect of any Environmental Law to the Premises;

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- (ii) any conduct or activity on the Premises; and
 - (iii) the presence of any pollution, Contamination or Hazardous Materials on the Premises,

within a reasonable time after receipt by the Tenant of that request; and

- (h) indemnifies the Landlord and the Minister for Lands in respect of all loss, cost, damage, expense and liability suffered by the Landlord in relation to a breach by the Tenant of this clause 7.12.

8. Additional agreements by Tenant

8.1 No encumbrances

The Tenant must obtain the prior written consent of the Landlord and the Minister for Lands before it mortgages, charges, encumbers or grants any Security Interest in the Tenant's interest in this Lease, the Premises or the Landlord's Assets.

8.2 No absolute caveat

- (a) The Tenant must not lodge an absolute caveat over the Land to protect the interest of the Tenant under this Lease, but if any absolute caveat is lodged, then clause 21.16 of this Lease shall apply.
- (b) The provisions of this clause do not prevent the Tenant lodging a caveat expressed to be subject to claim. The Tenant must at its cost withdraw any caveat on Termination.
- (c) The Tenant must withdraw any caveat lodged by it over the Land within 14 days after any request in writing from the Landlord, for the purposes of permitting any dealing with the Land or any part of it by the Landlord not adversely affecting the estate or interest of the Tenant in the Land subject to:
 - (i) if the Landlord's dealing includes the lodgement of a new mortgage over the Land, or any part of it including the Premises, the new mortgagee must first consent in writing to this Lease (which consent may be given subject to reasonable conditions); and
 - (ii) the Landlord paying the reasonable costs of preparation of the withdrawal, the preparation of a fresh caveat in protection of the Tenant's interests under this Lease and the registration fees payable to Landgate with respect to the lodgement of the withdrawal and the fresh caveat.

8.3 Registration of Lease and mortgagee consent

- (a) If the Landlord requires this Lease to be registered at Landgate:
 - (i) the Landlord must seek consent to this Lease from each mortgagee of the Land (which consent may be given subject to reasonable conditions);

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- (ii) the Tenant must, if requested, promptly execute each mortgagee's standard form of mortgagee consent documentation or any other documentation reasonably required by any mortgagee as a condition of providing its consent; and
 - (iii) the Parties must do all other things reasonably necessary to facilitate the registration of this Lease.
- (b) On or before Termination, the Tenant must provide the Landlord with a surrender of this Lease, in registrable form and properly executed by the Tenant but, if the Tenant fails to provide the surrender to the Landlord then clause 21.16 of this Lease shall apply.
 - (c) For the avoidance of doubt, the Landlord may elect to register the Lease at any time during the Term or any Further Term (if exercised) and the Tenant must comply with this clause 8.3 as and when required by the Landlord.

8.4 Pass on notices

The Tenant must immediately give notice in writing to the Landlord of any notice received by the Tenant from any Authority relating to the Premises.

8.5 Permit intending tenants etc. to inspect

The Tenant must permit the Landlord and its servants and agents at all reasonable times to enter the Premises with, and exhibit the Premises to prospective tenants or purchasers and allow the Landlord to affix and exhibit where the Landlord thinks fit any usual "for sale" notice or sign (with the name and address of the Landlord or its agent on it), and within the period of 6 months immediately preceding Termination, allow the Landlord to affix and exhibit where the Landlord thinks fit any usual "to let" notice or sign (with the name and address of the Landlord or its agent on it).

8.6 No fencing of perimeter of Premises

The Tenant acknowledges and agrees that:

- (a) the Premises is a community facility and, subject to the rights of any subtenants and licensees of the Premises, the Premises must remain open and accessible to members of the general public; and
- (b) subject to the rights of any subtenants and licensees of the Premises, no part of the Premises can be fenced-off to members of the general public.

9. End of Lease obligations

9.1 Yielding up

The Tenant must at Termination:

- (a) yield and deliver up possession of the Premises to the Landlord in a state that is consistent with the due performance by the Tenant of the Tenant's Obligations and otherwise consistent with its obligations as Operator under the Operator Agreement, including:

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- (i) in a state of good and substantial repair, order and condition taking into account fair wear and tear; and
 - (ii) in a state of cleanliness and decoration as required by this Lease;
 - (b) surrender all Access Cards to the Landlord at its address for notice under this Lease; and
 - (c) inform the Landlord of all combinations of any locks, safes and vaults in the Premises.

9.2 Tenant's Make Good Obligations

- (a) The Tenant must before Termination:
 - (i) remove from the Premises, the Building and the Land all:
 - A. fixtures and fittings, equipment, partitioning, signs and furnishings erected or installed by the Tenant or purchased by the Tenant from any previous occupier of the Premises (other than any fixtures and fittings, equipment and furnishings which in the opinion of the Landlord form an integral part of the Premises or of the Building); and
 - B. Tenant's chattels;
 - (ii) ensure all wires, pipes, sewers and drains are clean, operational and free flowing;
 - (iii) ensure that all fences and gates are secure and in good working order;
 - (iv) remove all rubbish, trade waste, cartons, boxes, produce, abandoned items from the Premises;
 - (v) professionally clean, steam clean or dry clean (as applicable) all floors and laydown areas;
 - (vi) arrange, during the last month of the Term, for the Services within, above, beneath or predominantly serving the Premises to be serviced, placed in good working order and certified, by suitably qualified persons, as being in compliance with all applicable Laws and standards and for written service reports for all such works to be provided to the Landlord before Termination;
 - (vii) during the last month of the Term, clean up, decontaminate and remediate all Contamination of the Premises that occurred during the Term and during any prior period of occupation by the Tenant;
 - (viii) ensure the Premises are in state of repair and cleanliness consistent with the Tenant's obligations as Operator under the Operator Agreement;

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- (ix) return the Building and all other buildings on the Premises to Base Building Standard and Configuration; and
 - (x) make good to the satisfaction of the Landlord any damage caused to the Premises in complying with this clause 9.2(a),

(together the **Tenant's Make Good Obligations**).

- (b) The property in all fixtures and fittings, equipment and furnishings which under clause 9.2(a) the Tenant is not to remove from the Premises and Tenant's chattels which the Tenant has not removed from the Premises (together the **Tenant's Abandoned Property**), will immediately on Termination, become the property of the Landlord. The Landlord will not be obliged to pay any consideration or compensation for that property and may deal with that property as the Landlord sees fit.
- (c) The Tenant grants to the Landlord a Security Interest in the Tenant's Abandoned Property to secure the Tenant's Obligations.
- (d) Without limiting the effect of clause 8.1, the Tenant must not mortgage, charge, encumber or grant any Security Interest in the Tenant's Abandoned Property, or agree to do so, without the Landlord's prior written consent.

9.3 Tenant's payment in lieu of Make Good

At the election of the Landlord, the Tenant must pay to the Landlord an amount agreed between the Parties, acting reasonably, as the cost of the Tenant carrying out the Tenant's Make Good Obligations (or any component of them) and on payment by the Tenant to the Landlord of the agreed amount, the Tenant will be released from its obligation to perform the Tenant's Make Good Obligations (or the relevant component of them). If the Parties cannot agree on the amount payable by the Tenant under this clause the matter may be referred by the Landlord or the Tenant to the Expert Determination Process.

10. Landlord's agreements, reservations and rights

10.1 Quiet enjoyment

Provided the Tenant duly pays the Rent and performs and observes the Tenant's Obligations and subject to the Landlord's rights in this clause 10, the Tenant may peaceably and quietly hold and enjoy the Premises during the Term, without any interruption by the Landlord or any person claiming through, under or in trust for the Landlord.

10.2 Right to grant other leases etc

The Landlord reserves the right to grant other leases or licences other than for the Permitted Use on land adjacent to the Premises, and the grant of any lease or licence may be made without compensation to the Tenant, and without affecting the liability of the Tenant to perform, observe and comply with the Tenant's Obligations.

10.3 Landlord's right to install services and rights under Operator Agreement

- (a) The Landlord and its employees, agents and independent contractors are entitled:
 - (i) to enter the Premises at all reasonable times with all necessary materials and equipment to erect, make, excavate, lay or install in, on, over, through or under the Premises any posts, drains, pipes, conduits, ducts, cables, wires or other things required for any existing or future service to the Premises or any adjacent adjoining land including to pass running water, heat, oil, electricity and other power, telecommunications cables and conditioned air;
 - (ii) to enter the Premises for the purpose of inspecting, removing, maintaining, altering or adding to any such things relating to an existing or future service to the Premises or any adjacent adjoining land; and
 - (iii) to enter the Premises for the purposes of exercising any rights or performing any obligations that the Landlord has under the Operator Agreement.
- (b) In each case mentioned in clause 10.3(a) the Landlord must cause as little inconvenience and damage to the Tenant as is reasonably practicable in the circumstances and must make good any damage caused.
- (c) The Landlord is not liable to the Tenant for any loss or damage caused to the Premises, or to the Tenant, if the Landlord or its employees, agents or contractors does anything it is permitted to do under this Lease which causes or results in any minor interruption to the Tenant's business, or any interference in the use or enjoyment of the Premises by the Tenant.

10.4 Right to Landlord to create easements etc.

The Landlord reserves the right for the purpose of:

- (a) providing public or private access to or egress from the Premises or other land adjacent to the Premises (**Adjacent Land**);
- (b) support of any viaduct or bridge constructed or to be constructed between the Premises and Adjacent Land;
- (c) support of structures erected or to be erected on Adjacent Land or the Premises;
- (d) erecting electricity generation plant and equipment (including solar panels) on the Premises or Adjacent Land; or
- (e) provision of services (including water, drainage, gas, electricity, telephone, data and electronic communications) to the Premises or to Adjacent Land or to any viaduct or bridge,

to enter into any arrangements or agreements with any owner, tenant or occupier of Adjacent Land or with any Authority or other person and for those purposes may

dedicate, transfer, grant or create easements and other rights and interests in favour of that person or Authority and on those terms and conditions as the Landlord thinks fit and the estate or interest of the Tenant under this Lease is held subject to any such arrangement or agreement.

10.5 Emergency management

The Tenant acknowledges and agrees that in the case of an emergency or natural disaster affecting the Perth Metropolitan area:

- (a) the Landlord will have unfettered access to, and use of, the Premises if required by the Landlord; and
- (b) the Landlord will give notice to the Tenant as soon as reasonably possible, and in any event promptly and without any undue delay, after it determines its need to use the Premises in connection with the emergency or natural disaster.

11. Dealings with this Lease and the Tenant's interest in the Premises

11.1 Tenant not to assign etc.

The Tenant must not, without the Landlord's prior written consent, and if and to the extent that such approval is necessary, the prior written approval of the Minister for Lands, assign, sub-let, licence or part with possession or occupation of the Premises, or any part of them, or this Lease, or any estate or interest in it.

11.2 Landlord's consent to an assignment

The Landlord will not unreasonably withhold its consent to an assignment of the whole of the Premises or a sublease of any part of the Premises if:

- (a) the proposed assignee is the person who has been approved by the Landlord (in its capacity as the Town of East Fremantle under the Operator Agreement) to take an assignment of the Operator's rights and obligations under the Operator Agreement in accordance with the provisions of the Operator Agreement;
- (b) in the case of a proposed assignment, the proposed assignee is a person who the Tenant has demonstrated to the satisfaction of the Landlord:
 - (i) is a respectable, responsible and solvent person;
 - (ii) has a suitable financial capacity;
 - (iii) has similar or better experience in operating and managing an integrated sport and leisure precinct; and
 - (iv) has the ability to meet the financial and all other obligations of the Tenant under this Lease and as Operator under the Operator Agreement;
- (c) in the case of a proposed sublease, the proposed sublessee is a person who the Tenant has demonstrated to the satisfaction of the Landlord:

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- (i) is a respectable, responsible and solvent person;
 - (ii) has the ability to meet the financial and all other obligations of the Tenant under this Lease; and
 - (iii) is capable of adequately carrying on the business to permitted to be carried on in the Premises.
- (d) prior to the Landlord giving its consent or the assignee or the sublessee being given possession of the Premises, the Tenant:
- (i) executes an assignment or sub-lease of this Lease in a form prepared by the Landlord's solicitors;
 - (ii) in the case of a proposed assignment of this Lease, executes a deed of assignment of the Operator Agreement to which the Landlord is a party and which is in a form prepared by the Landlord's solicitors;
 - (iii) procures the execution of an assignment or sub-lease of this Lease, in a form prepared by the Landlord's solicitors, by:
 - A. the assignee or sublessee; and
 - B. any guarantors as are required under this clause 11;
 - (iv) in the case of a proposed assignment of this Lease, procures the execution of a deed of assignment of the Operator Agreement, in the form prepared by the Landlord's solicitors, by the assignee and any guarantors as are required under clause 32.7(c)(vi) of the Operator Agreement;
 - (v) delivers to the Landlord:
 - A. the assignment or sub-lease; and
 - B. in the case of a proposed assignment of this Lease, the deed of assignment of the Operator Agreement;
- (e) where the proposed assignee or sublessee is a corporation, the performance of the covenants by the assignee or sublessee in the assignment or sub-lease is guaranteed by such of the directors and or principal shareholders of the corporation as the Landlord may require and the proposed guarantor of the assignee or sublessee is a person who the Tenant has demonstrated to the satisfaction of the Landlord:
- (i) is a respectable, responsible and solvent person;
 - (ii) has suitable financial capacity; and
 - (iii) has the ability to meet the financial and all other obligations of the Guarantor under this Lease and "the Guarantor" under the Operator Agreement;
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- (f) the Rent, outgoings and operating expenses expended, provided or incurred by the Landlord in respect of the Premises, Rates and Taxes, service charges, and other money payable under this Lease are paid;
 - (g) there is not any existing unremedied Event of Default;
 - (h) the Tenant pays to the Landlord all reasonable costs, charges and expenses incurred by the Landlord:
 - (i) for any enquiries which may be made by or on behalf of the Landlord to satisfy the Landlord that the proposed assignee or sublessee meets the criteria set out in clause 11.2(a); and
 - (ii) for the preparation and approval of the form of assignment or sub-lease, whether or not in either case the assignment or subletting proceeds;
 - (i) where requested by the Landlord, the proposed assignee or sublessee:
 - (i) pays to the Landlord as a Security Deposit an amount equal to 3 months' Rent or any greater amount as the Tenant was required to pay; or
 - (ii) provides to the Landlord a Bank Guarantee in an amount equivalent to 3 months' Rent or any greater amount as the Tenant was required to provide,
to be held on the terms of this Lease;
 - (j) the Tenant pays to the Landlord, or as the Landlord directs, a reasonable fee (including any agent fee) applicable to assignment of leases or sub-leases (as the case may be);
 - (k) the assignor Tenant has withdrawn any caveat lodged by the Tenant over the Land or any part of it;
 - (l) in the case of a sub-lease, the rate of Rent based on a floor space basis payable under the sub-lease must be not less than the rate of Rent payable under this Lease from time to time; and
 - (m) If required by Law, the Tenant has provided the proposed assignee or sublessee with a copy of a BEEC in relation to the Building.

11.3 Permitted licensing and subleasing

The Landlord and Tenant acknowledge and agree that the restrictions with respect to licensing and sub-leasing in clauses 11.1 and 11.2 (other than the requirement to obtain the consent of the Minister for Lands) do not apply to:

- (a) the EFFC Sublease (provided the EFFC Sublease is on the terms set out in clause 6.1(a) of the Operator Agreement and the Tenant has complied with its obligations under that clause);

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- (b) the EFFC Licence (provided the EFFC Licence is on the terms set out in clause 6.1(b) of the Operator Agreement and the Tenant has complied with its obligations under that clause);
 - (c) the EFBC Sublease (provided the EFBC Sublease is on the terms set out in clause 6.2(a) of the Operator Agreement and the Tenant has complied with its obligations under that clause);
 - (d) the EFBC Licence (provided the EFBC Licence is on the terms set out in clause 6.2(b) of the Operator Agreement and the Tenant has complied with its obligations under that clause);
 - (e) the EFCC Sublease (provided the EFCC Sublease is on the terms set out in clause 6.3(a) of the Operator Agreement and the Tenant has complied with its obligations under that clause);
 - (f) the EFCC Licence (provided the EFCC Licence is on the terms set out in clause 6.3(b) of the Operator Agreement and the Tenant has complied with its obligations under that clause);
 - (g) the EFP Licence (provided the EFP Licence is on the terms set out in clause 6.4 of the Operator Agreement and the Tenant has complied with its obligations under that clause);
 - (h) the Community Garden Sublease (provided the Community Garden Sublease is on the terms set out in clause 6.5 of the Operator Agreement and the Tenant has complied with its obligations under that clause); and
 - (i) the CAHS Sublease (provided the CAHS Sublease is on terms set out in clause 6.6(e) of the Operator Agreement and the Tenant has complied with its obligations under that clause).

11.4 Change in control of Tenant

- (a) Where the Tenant is a corporation (other than a company listed on the Australian Stock Exchange) any change:
 - (i) in the legal or beneficial ownership of 50% or more of the issued shares in the Tenant or a holding company (as that expression is defined in the Corporations Act) of the Tenant, or
 - (ii) of the majority of the officeholders of the Tenant or a holding company (as that expression is defined in the Corporations Act) of the Tenant,

is deemed to be an assignment of this Lease, and the Tenant must not permit any change to occur without the Landlord's consent which must not be unreasonably withheld if the provisions of clause 11.2 (or those of them as required by the Landlord) are complied with, as if the company after the change were the assignee.

- (b) Where the Tenant or a holding company is the trustee of a trust any change:

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- (i) in the case of a unit trust, in the legal or beneficial ownership of or control of more than 10% of the units in the trust;
 - (ii) in the case of a trust that is not a unit trust, in the legal or beneficial ownership of or control of the trust;
 - (iii) to the trustee of the trust; or
 - (iv) to beneficiaries or to the appointor of the trust (or equivalent position having the power to appoint or remove the trustee),

is deemed to be an assignment of this Lease, and the Tenant must not permit any change to occur without the Landlord's consent which must not be unreasonably withheld if the provisions of clause 11.2 (or those of them as required by the Landlord) are complied with, as if the Tenant after the change were the assignee.

12. Default by the Tenant

12.1 Default provisions

There is an Event of Default if:

- (a) the Rent, Rates and Taxes or any other payment payable under this Lease remains unpaid after becoming due, and this default continues after the expiration of 28 days after the Landlord has given the Tenant a written notice requiring the Tenant to remedy this default;
- (b) there is a breach or non-observance of any other Tenant's Obligations and the breach or non-performance continues after the expiration of 28 days' written notice to the Tenant to remedy the breach;
- (c) there is a breach or non-observance of any of the Tenant's obligations as Operator under the Operator Agreement and the breach or non-performance continues after the expiration of 28 days' written notice to the Tenant (as Operator) to remedy the breach (under clause 22(c) of the Operator Agreement);
- (d) any execution is issued against the Tenant and is not satisfied or withdrawn within 30 days after issuance;
- (e) any order is made or if there is any application made for an order or warrant under the *Civil Judgments Enforcement Act 2004* (WA) in relation to any property of the Tenant or any Guarantor;
- (f) any mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any property of the Tenant or any Guarantor;
- (g) an order is made under section 79 or 114 of the *Family Law Act 1975* (Cth) (or similar provision under the *Family Court Act 1997* (WA)) or if an injunction is granted under section 114 of the *Family Law Act 1975* (Cth) (or similar provision

under the *Family Court Act 1997 (WA)*) in relation to the property of the Tenant or any Guarantor or if an application is made for any such order or injunction;

- (h) the Premises are abandoned, deserted or vacated (other than for the purposes of normal vacation periods) or the Tenant is dispossessed of the Premises by process of Law; or
- (i) any Insolvency Event occurs in respect of the Tenant or the Guarantor,

and in any such case, subject to the provisions of the *Bankruptcy Act 1966 (Cth)* and the provisions of the *Corporations Act 2001 (Cth)* as it relates to termination for an Insolvency Event, the Landlord may then at its option re-enter, occupy and resume possession of the Premises or any part of them in the name of the whole and this Lease and the Term will then cease and determine but without releasing the Tenant from the Rent and all other money accrued up to the time of the re-entry and without prejudice to the right of action of the Landlord in respect of any breach of the Tenant's Obligations.

12.2 Landlord's right to remedy

- (a) The Landlord may remedy any Event of Default including the payment of any money payable by the Tenant under this Lease.
- (b) If the Landlord elects to remedy an Event of Default, all debts, costs and expenses incurred by the Landlord, including legal costs and expenses in remedying an Event of Default, must be paid by the Tenant to the Landlord on demand.

12.3 Damage for breach of essential term

- (a) The agreements by the Tenant:
 - (i) to pay the Rent (clause 3.1), Rates and Taxes (clause 4.1) and pay for all Services (clause 4.2 at the times and in the manner provided in this Lease;
 - (ii) to repair, maintain and keep the Premises in good and substantial repair, order and condition (clause 6.1);
 - (iii) not to make any alterations or additions in the construction or arrangement of the Premises without consent (clause 7.1);
 - (iv) not to use or occupy the Premises for any purpose other than for the Permitted Use (clause 7.6);
 - (v) to occupy and keep the Premises open for business during the Term (clause 7.6);
 - (vi) to comply with its environmental obligations (clause 7.12); and
 - (vii) not without the prior consent in writing of the Landlord to assign, sub-let or part with possession or occupation of the Premises or any part of them (clause 11.1),

are (subject to clause 12.3(b)) essential terms of this Lease and the breach, non-observance or non-performance of any one or more of those terms is an Event of Default.

- (b) The presence of clause 12.3(a) in this Lease does not mean that there are no other essential terms of this Lease.

12.4 Termination of Operator Agreement

This Lease will terminate automatically on termination of the Operator Agreement.

13. Damage and destruction

13.1 Destruction of Premises

- (a) If a material part or a substantial part of the Premises is destroyed or damaged:
- (i) to an extent so as to be unfit for occupation or use during the Term; and
 - (ii) is not re-instated by the Landlord within 6 months after the destruction or damage occurring,

then, unless within that 6 month period, the Landlord:

- (iii) elects by notice in writing to the Tenant to reinstate the Premises to its original design as nearly as practicable; and
- (iv) commences that re-instatement,

the Landlord or the Tenant may (in the case of the Tenant, only if that damage or destruction is not caused by the Tenant or a Permitted Person) by notice in writing to the other Party terminate this Lease as from the date of the giving of that notice without prejudice to the rights of the Landlord in relation to any previous Event of Default.

- (b) For the purposes of this clause the expression "a substantial part of the Premises" means one third or more of the net lettable area of the Premises.

14. Holding over provisions

- (a) If the Tenant continues to occupy the Premises with the agreement of the Landlord after Termination, then the Tenant will be a three monthly tenant on the same terms and conditions (with appropriate changes made) as are contained or implied in this Lease excluding any option for a Further Term.
- (b) The three monthly tenancy may be terminated by either Party giving the other 3 months' notice in writing. This notice may be given at any time.

15. Landlord's liability

15.1 Liability for loss

- (a) Under no circumstances will the Landlord be liable to the Tenant for any loss, damage or injury suffered by the Tenant as a result of:
- (i) the Tenant's occupation and use of the Premises;
 - (ii) the enjoyment of the Tenant's other rights with respect to the Premises;
 - (iii) any malfunction or breakdown in, or interruption of or to the:
 - A. water gas or electricity services;
 - B. air conditioning equipment;
 - C. Fire Fighting Equipment;
 - D. lifts, elevators or any appurtenance; or
 - E. the Landlord's Property,contained in the Premises; or
 - (iv) the breakage, blockage or overflow of any sewer, waste drains, conduits, cables, wires, gutters, down pipes or storm water drains from any cause,
- except to the extent both:
- (v) caused by any act, neglect, default or omission of the Landlord, or its agents or employees; and
 - (vi) that its liability cannot be excluded at Law.
- (b) The Landlord will not be liable to the Tenant in relation to any loss or damage suffered by the Tenant in relation to an act, neglect or default of any other tenant or occupier of the Premises.

15.2 Liability of Landlord and others

- (a) Despite anything in this Lease or any Law to the contrary, before the Landlord will be liable for any loss or damage the Tenant suffers by reason of the Landlord doing or failing to do anything in respect of the Premises, the Tenant must give the Landlord a notice specifying the act or omission and the reasonable time for its performance or rectification and the Landlord must have failed to do so within the time specified in the notice.
- (b) The Tenant will be liable for any act, neglect, default or omission of a Permitted Person in any way arising with respect to the rights and obligations created by this Lease.

15.3 Limitation of liability as trustee

The Tenant acknowledges and agrees that if the Landlord has entered into this Lease as trustee of a trust and in no other capacity:

- (a) the Landlord will not be personally liable to the Tenant for any breach of a term contained or implied in this Lease;
- (b) if the Landlord breaches this Lease, the Tenant is permitted to claim damages from the Landlord only to the extent that the Landlord can be reimbursed from the net assets of the trust; and
- (c) the officers of the Landlord will not be personally liable to the Tenant.

15.4 Landlord's limitation of liability

- (a) Subject to this Lease, the Landlord's agreements bind the Landlord only while it is the registered proprietor of the Land. The Landlord shall remain liable to the Tenant for any outstanding matters relating to the period prior to the transfer of the Premises.
- (b) The Landlord's agreements under this Lease will not render the Landlord personally liable in damages for a breach except in the case of the Landlord's own act, default or negligence, or an act, default or negligence of an employee, contractor or agent of the Landlord.

16. Notices

16.1 Form of Notices

A notice, consent, approval, demand or other communication to be given or made under this Lease (unless otherwise provided) must be in writing, in English and signed by or on behalf of, the Party giving or making it.

16.2 Delivery of Notices

- (a) A Party must send a notice to the other Party at the address listed in Item 13 of the Reference Schedule.
- (b) A Party may vary its address by sending a notice to the other Party.
- (c) A Party must use the new address from the time that it receives the notice.
- (d) A Party may give notice in any of the following modes:
 - (i) by email;
 - (ii) by pre-paid mail; or
 - (iii) by hand delivery.

16.3 Effect and Delivery

- (a) A notice takes effect at the time stated in the notice, but if no time is stated or the time stated is before receipt, then a notice takes effect on receipt.
- (b) A hand delivered notice is received:
 - (i) if hand delivered before 5:00pm on a Business Day, on that Business Day;
 - (ii) if hand delivered after 5:00pm on a Business Day, on the next following Business Day;
 - (iii) if hand delivered on a day not being a Business Day, on the next day being a Business Day.
- (c) A notice sent by post is received:
 - (i) 3 days after posting if within Australia; or
 - (ii) 7 days after posting if posted to or from a place outside Australia.
- (d) A notice sent by email is received:
 - (i) if transmitted before 5:00pm on a Business Day, on that Business Day;
 - (ii) if transmitted after 5:00pm on a Business Day, on the next following Business Day;
 - (iii) if transmitted on a day not being a Business Day, on the next day being a Business Day,

unless the sender receives notification from its email server or the other Party's email server that the email is undeliverable or was not delivered.
- (e) A Party may send a notice in more than one way permitted under this deed.
- (f) If a Party sends the same notice using more than one method, then the notice is effective from the time that the receiver receives the first notice.
- (g) The Landlord's solicitor or the Managing Agent may give or serve notice on the Tenant with the same effect as if it had been given or served by the Landlord.

17. Extension of term**17.1 Further Term**

- (a) If the Tenant wishes to take a new lease for the Further Term, the Tenant must give the Landlord written notice not less than 12 months before the expiration of the Term.
- (b) The grant of a new lease for the Further Term is subject to the prior written consent of the Minister for Lands (if required).
- (c) If the Landlord receives a notice from the Landlord in accordance with clause 17.1(a), the Landlord may in its sole and absolute discretion either:
 - (i) refuse to grant a new lease for the Further Term (provided that the Landlord must not refuse to grant a new lease if it has already elected to extend the term of the Operator Agreement for the further term in accordance with clause 21.1(b) of the Operator Agreement; or
 - (ii) elect to grant a new lease for the Further Term (provided that the Landlord must not grant a new lease if it has already elected to refuse to extend the term of the Operator Agreement for the further term in accordance with clause 21.1(b) of the Operator Agreement.
- (d) The Landlord must give the Tenant not less than 6 months' written notice of its decision under clause 17.1(c).
- (e) If:
 - (i) the Tenant gives notice to the Landlord of its intention to take a new Lease for the Further Term in accordance with clause 17.1(a); and
 - (ii) the Landlord gives notice to the Tenant of the Landlord's decision to grant a new lease for the Further Term in accordance with clause 17.1(c)(ii),

then the new lease will be on and subject to the same terms and conditions as are contained in or implied by this Lease except for this provision for renewal, unless there is more than one Further Term in which event the number of Further Terms will be reduced by the Further Term then exercised.

18. Guarantee

- (a) In consideration of the Landlord entering into this Lease, at the request of the Guarantor, the Guarantor (and if more than one jointly and severally) for himself or herself or themselves, guarantees to the Landlord the due performance and observance by the Tenant of all the Tenant's Obligations including the due payment of the Rent and other money payable under this Lease by the Tenant.
- (b) The Guarantor acknowledges and agrees that:
 - (i) no time, credit, forbearance, indulgence or concession which may at any time be granted by the Landlord to the Tenant;

- (ii) no release of, or compromise with, any one or more Guarantor by the Landlord;
- (iii) no variation of the provisions of this Lease;
- (iv) no extension, renewal, holding over of the Term or other continued occupation of the Premises by the Tenant;
- (v) no assignment of this Lease or sub-lease of the Premises or any part of them; and
- (vi) no Termination (whether by passage of time, re-entry, forfeiture, surrender or otherwise),

will prejudice or affect the liability of the Guarantor under this guarantee.

- (c) The Guarantor indemnifies the Landlord against all losses, costs, expenses and damages sustained or incurred by the Landlord in respect of any Event of Default on the part of the Tenant including an Insolvency Event.
- (d) The Guarantor acknowledges and agrees that this guarantee and indemnity is irrevocable and continuing and extends to cover all of the Tenant's Obligations to the Landlord.
- (e) If an Insolvency Event occurs with respect to the Tenant:
 - (i) the Guarantor will not prove or Claim in any such Insolvency Event until the Landlord has received one hundred cents in the dollar of the money owing by the Tenant to the Landlord;
 - (ii) the Guarantor will hold in trust for the Landlord such proof and Claim; and
 - (iii) without prejudice to any other rights of the Landlord the Guarantor indemnifies the Landlord against all losses, costs, expenses and damages sustained or incurred by the Landlord consequent on any disclaimer of this Lease by a liquidator or controller or trustee of the Tenant for the residue of the Term which would have remained if there had been no disclaimer.
- (f) If the leasehold estate created by this Lease is terminated by disclaimer by a trustee, controller or liquidator of the Tenant, the Guarantor must on being requested to do so in writing by the Landlord within 90 days after the date of the disclaimer, enter into a lease of the Premises for a term commencing from the date of the disclaimer to the end of the Term:
 - (i) at the cost of the Guarantor; and
 - (ii) on the terms and conditions of this Lease but without containing any provision for a guarantee of that lease.
- (g) Subject to:

- (i) this Lease being assigned in accordance with clause 11 (including the Landlord obtaining a replacement guarantee from the guarantor of the assignee in accordance with clause 11.2(e)); and
- (ii) the Operator Agreement being assigned in accordance with clause 32.7 of the Operator Agreement (including the “Town” obtaining a replacement guarantee from the guarantor of the assignee in accordance with clause 32.7(c)(vi) of the Operator Agreement,

the Guarantor is released on and from the date of assignment of this Lease.

19. PPSA

19.1 Landlord’s Assets

- (a) The right to use the Landlord’s Assets granted by this Lease creates a Security Interest.
- (b) the Security Interest extends to all present and after acquired property arising from the Tenant’s dealing with the Landlord’s Assets.
- (c) The Landlord’s Assets are commercial property.
- (d) The Landlord’s Assets must not be removed from the Premises.

19.2 Security Interests

In relation to any Security Interest created under this Lease:

- (a) the Security Interest may be registered on the register by the Landlord and the Tenant agrees to do:
 - (i) all things necessary and required by the Landlord to effect to that registration of the Security Interest in the best priority possible; and
 - (ii) anything else the Landlord requests the Tenant to do in connection with the PPSA without delay;
- (b) the Tenant waives its right under the PPSA:
 - (i) to receive a copy of any verification statement, financing change statement, or any notice that the Landlord intends enforce a Security Interest granted to the Landlord or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of;
 - (ii) to object to a proposal by the Landlord to enforce any Security Interest in satisfaction of any obligation owed by the Tenant to Landlord;
 - (iii) to receive a statement of account following the sale of any personal property following the enforcement of a Security Interest;

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- (c) the Parties agree that the Landlord is not required to respond to a request made under section 275 of the PPSA and the Tenant must not disclose information of the kind set out in section 275(1) of the PPSA;
 - (d) The Parties agree that any provision of any additional Landlord's Assets made by the Landlord to the Tenant which is not specifically set out in this Lease is subject to the terms of this Lease;
 - (e) the enforcement provisions contained in this Lease are in addition to any rights available to the Landlord under the PPSA and apply to the maximum extent permitted by Law; and
 - (f) the Parties agrees that the following provisions of the PPSA will not apply and the Tenant will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor), section 121(4), section 125, 129(2) and (3); section 132, section 142 and section 143.

20. Liquor Licence

20.1 Liquor Licence

If the Tenant uses the Premises for a purpose which requires a Liquor Licence, the Tenant must comply with the terms of this clause.

20.2 Compliance with Liquor Legislation

The Tenant (or its nominee in which case this clause shall apply to the nominee) must:

- (a) at the Tenant's own expense do everything necessary to keep the Liquor Licence current, including:
 - (i) complying with the requirements and conditions of the Liquor Licence;
 - (ii) preparing, supplying, filing and registering all documents and information required under any Law or by any Authority in respect of the Liquor Licence;
 - (iii) promptly paying all money payable in respect of the Liquor Licence when due and payable including all annual licence fees;
 - (iv) carrying out any repairs required by the Licensing Authority in order to ensure that the Liquor Licence is not suspended, cancelled or in any way adversely affected;
- (b) not to do or allowed to be done anything which causes or could cause the Liquor Licence to be cancelled, suspended, forfeited, surrendered, terminated or otherwise adversely affected;
- (c) promptly comply with any order or notice given to the Tenant under the Liquor Act, any conditions of the Liquor Licence or any other Law relating to the Liquor Licence;

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- (d) promptly give full written particulars to the Landlord of:
- (i) any prosecution or proposed prosecution of the Tenant or any employee of the Tenant for breach of any obligation, or the commission of any offence, under any Law; or
 - (ii) any notice, demand or objection given or made by any person, concerning the Liquor Licence.

20.3 Manager

The Tenant must appoint a manager and make any other appointments in respect of the Premises required under the Liquor Act, by the Licensing Authority or the under the terms of the Liquor Licence.

20.4 Liquor Licence must be maintained

The Tenant must not:

- (a) do or admit to do;
 - (b) allow any other person to do or admit to do,
- anything which alone or conjunction with the doing or omitting of anything else causes or could cause:
- (c) the Liquor Licence liable to be cancelled, suspended, forfeited, surrendered, terminated or otherwise adversely affected;
 - (d) renewal of the Liquor Licence to be refused; or
 - (e) the excision of any part of the Premises from the area the subject of the Liquor Licence.

20.5 Renewal

The Tenant must:

- (a) at its own cost, do anything necessary to keep the Liquor Licence current (including making applications for renewals);
- (b) not, without the prior written consent of the Landlord (which consent will not be unreasonably withheld), transfer, part with possession of, or in any way encumber the Liquor Licence except by way of transfer to an assignee or chargee permitted under this Lease;
- (c) produce the Liquor Licence on demand for inspection at the Premises by:
 - (i) the Landlord; or
 - (ii) any person authorised by the Landlord.

20.6 Declarations

The Tenant must promptly give to the Landlord on request a copy of any declaration or statement of liquor purchases or other information required to be given to the Licensing Authority.

20.7 Trading

- (a) The Tenant must remain the holder of the Liquor Licence during the Term unless the Landlord otherwise consents in writing.
- (b) The Tenant must:
 - (i) keep the Premises open for business:
 - A. only during the hours;
 - B. for the purposes,
which are permitted under the Liquor Licence;
 - (ii) manage and conduct the trade and business carried on by the Tenant under the Liquor Licence in a quiet, orderly and business like manner.

20.8 Authority

The Tenant authorises the Landlord to obtain from the Licensing Authority (as and when the Landlord thinks fits) any information the Landlord requires including details of any charges or complaints against the Tenant.

20.9 Alteration of hours and trading terms

The Tenant will not be entitled to any reduction of the Rent or any other money payable under this Lease by virtue of any Law terminating the Liquor Licence or any condition imposed on the Liquor Licence affecting the hours during which any part of the Premises may not be lawfully opened for the sale of liquor or affecting the manner in which the Tenant may conduct the business carried on under the Liquor Licence.

20.10 Closure of Premises

The Landlord is not responsible or liable to pay to the Tenant, or to any occupier or licensee of the Premises, any compensation or damages if any part of the Premises is closed by the Licensing Authority or the Liquor Licence ceases to be enforced or is withheld, declined or refused under any Law.

20.11 Standards

The Tenant must:

- (a) keep the Premises properly furnished and otherwise up to the standard required by the Licensing Authority; and

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- (b) fulfil and perform all other requirements of the Licensing Authority in respect of the Premises.

20.12 Payment of fees

The Tenant must:

- (a) pay all fees (to the extent required by Law) levied, rated or assessed on the Premises in respect of the Liquor Licence; and
- (b) promptly produce to the Landlord on request any receipts for those payments.

20.13 Indemnity

Except to the extent caused by any act, neglect, default or omission of the Landlord, or its agents, contractors or employees the Tenant must indemnify and keep indemnified the Landlord against all costs, claims, demands, expenses, losses or damages of whatever nature suffered or incurred by the Landlord as a result of failure by the Tenant to:

- (a) duly and punctually observe and perform all obligations on the part of the Tenant contained and implied in clauses 20.1 to 20.12; and
- (b) retain the Liquor Licence in respect of the Premises.

20.14 Transfer of Land Act Covenants implied

The following covenants by the Tenant are to be construed according to section 94 of the *Transfer of Land Act 1893* (WA):

- (a) the Tenant will not carry on any offensive trade;
- (b) the Tenant will apply for renewal of licence; and
- (c) the Tenant will facilitate the transfer of licence.

20.15 Adjustments at Termination

Subject to the Tenant complying with the provisions of clause 20.17, at Termination all pre-paid rates, insurance premiums and licence fees paid by the Tenant for any period extending past Termination will be adjusted to the date on which the Premises is vacated and the Tenant is entitled to receive from the Landlord that part of all such rates, insurance premiums and licence fees applicable to any period subsequent to Termination.

20.16 Attorney

The Tenant (and the Tenant's personal representatives, assignees and sublessees) irrevocably appoints the Chief Executive Officer of the Landlord as attorney for the Term and for so long afterwards as may be necessary:

- (a) to perform all acts and prepare, sign and give all notices, applications and other documents as are necessary to transfer the Liquor Licence to the Landlord, or

its nominee, at Termination and complete any documents signed by the Tenant and deliver to the Landlord in accordance with this Lease for that purpose; and

- (b) to fill out and complete any documents (whether already held by the Landlord or not) and signed by the Tenant authorising any application in connection with the Liquor Licence or the business.

20.17 Transfer of Liquor Licence

At Termination the Tenant must do all things necessary to apply to transfer the Liquor Licence to the Landlord or its nominee or to otherwise deal with the Liquor Licence as the Landlord directs. The Landlord is not liable to the Tenant for any compensation or payment for transferring the Liquor Licence or any goodwill that may attach to the Liquor Licence or the business.

20.18 Support Application

- (a) The Landlord agrees, unless prevented from doing so at Law, subject to public policy constraints, and provided that the Tenant has complied with the Tenant's Obligations, to support any application by the Tenant for a Liquor Licence.

21. General Provisions

21.1 Moratorium

The application to this Lease of any present or future moratorium or Law having the effect of extending the Term or Further Term, reducing or postponing the payment of the Rent or any part of it, or otherwise affecting the operation of the Tenant's Obligations or providing for compensation rights or privileges at the expense of the Landlord in favour of the Tenant or any other person, is excluded and denied so far as an exclusion and denial is lawful.

21.2 Governing law

The law of the State governs this Lease.

21.3 Jurisdiction

The Parties submit to the exclusive jurisdiction of the courts of the State, the Federal Circuit Court and the Federal Court of Australia.

21.4 Severance

- (a) If a part of this Lease is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that part must be severed and ignored in the interpretation of this Lease.
- (b) The remaining parts of this Lease remain in full force and effect.

21.5 Variation

The Parties can vary this Lease only if the variation is in writing and signed by each Party.

21.6 Rights are cumulative

A Party's rights under this Lease are in addition to its rights at Law.

21.7 Survival

- (a) The warranties survive the Termination of this Lease.
- (b) Each indemnity survives the performance of obligations relating to this Lease and the Termination of this Lease.
- (c) To the extent that a Party has not satisfied an obligation or it is a continuing obligation, that obligation survives Termination.

21.8 Consents and approvals

- (a) Except as otherwise specifically provided in this Lease, any consent or approval which may be granted by the Landlord under this Lease may be granted or refused or granted subject to conditions in the absolute discretion of the Landlord. A consent or approval given by the Landlord to an ongoing course of conduct may be withdrawn at any time.
- (b) Any consent or approval granted by the Landlord under this Lease is a consent or approval granted by the Landlord acting in its capacity as landlord and not in its capacity as the relevant Approving Authority.

21.9 Waiver

- (a) A Party granting a waiver of a right relating to this Lease, must give written notice of that waiver to the Party that benefits from the waiver.
- (b) A Party's failure, partial failure or delay in exercising a right relating to this Lease is not a waiver of that right.
- (c) A Party may not claim that another Party's delay or failure to exercise a right relating to this Lease:
 - (i) constitutes a waiver of that right; or
 - (ii) is a defence to its own action or inaction.
- (d) No consent or waiver express or implied by the Landlord or the Managing Agent to or of any Event of Default will be construed as a consent or waiver to or of any other Event of Default.
- (e) The Parties may not waive or vary this clause.

21.10 No Agency or Partnership relationship

- (a) This Lease does not in any way or for any purpose constitute the Landlord being a partner of the Tenant in the conduct of the Tenant's business or otherwise, or a joint venturer or a member of a joint enterprise with the Tenant.

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- (b) The Tenant must not represent itself, and must ensure that its office bearers, members, employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of the Landlord or as otherwise able to bind or represent the Landlord.
 - (c) The Tenant is not by virtue of this Lease and is not deemed to be, an employee, partner, or agent of the Landlord, or have any power or authority to bind or represent the Landlord.

21.11 Managing Agent

The Landlord may appoint a Managing Agent to manage the Premises and that Managing Agent may represent the Landlord in all matters relating to this Lease.

21.12 Entire Agreement

- (a) This Lease and the Operator Agreement constitutes the entire agreement between the Parties in relation to the Premises and it supersedes all previous discussions, undertakings and agreements; and anything contained in any brochure, market analysis, report or other document prepared by the Landlord or any of the Landlord's agents or consultants for submission to potential tenants of the Premises.
- (b) Neither the Tenant nor the Guarantor have been induced to enter into this Lease by a statement or alleged statement, representation, warranty or condition verbal or written made by or on behalf of the Landlord and or the Landlord's agents or consultants which is not contained in this Lease.

21.13 Further assurance

Each Party at its own expense must do everything necessary to give full effect to this Lease.

21.14 Counterparts

- (a) The Parties may execute this Lease in any number of counterparts, which taken together constitute one instrument.
- (b) The Parties may exchange counterparts by scanning the entire duly executed counterpart and emailing it to the other Party.

21.15 Trust warranties

- (a) If the Tenant or the Guarantor (or both of them) act as trustee, then the Tenant and Guarantor jointly and severally agree with and warrant to the Landlord that:
 - (i) the Tenant or the Guarantor or both of them (as the case may be) has or have or will have full powers pursuant to its constitution and its deed of trust (in this Lease generally and together (if more than one) called the **Trust**) under which it purports to act when entering into this Lease, to enter into and give effect to this Lease; and

- (ii) the Tenant and Guarantor enter into this Lease in their personal capacity and in their capacity as trustee.
- (b) The Tenant and the Guarantor jointly and severally agree with and warrant to the Landlord that:
 - (i) the Trust is lawfully and validly constituted;
 - (ii) all deeds and other instruments in respect of the Trust have been properly executed;
 - (iii) the Trust is now and throughout the Term will remain unrevoked;
 - (iv) the Trust must not be varied in a way which will affect the Tenant's obligations under this Lease or the Guarantor's obligations under this Lease (as applicable) other than with the written consent of the Landlord, which must not be unreasonably withheld;
 - (v) the assets of the Trust and the assets of the Tenant and of the Guarantor will at all times be available to satisfy the obligations of the Tenant under this Lease;
 - (vi) the trustee has the right to be fully indemnified out of the assets of the Trust, for all liabilities it incurs in relation to this Lease and the assets of the Trust are sufficient to satisfy that right;
 - (vii) the consents or approvals of all persons necessary to execute this Lease so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
 - (viii) no person has taken or threatened, nor is the Guarantor or the Tenant aware of any person who is likely to take action to:
 - A. have the Trust wound-up or otherwise administered, or
 - B. charge the Tenant, the Guarantor or any person connected with the Tenant or the Guarantor, or acting on behalf or purportedly on behalf of the Tenant or the Guarantor, with any breach of trust or misappropriation of trust money in relation to the Trust; and
 - (ix) the Tenant and the Guarantor are not aware of any reason for:
 - A. the Trust to be wound-up (voluntarily or otherwise) or
 - B. the trustee of the Trust to be changed;
 - C. the assets of the Trust to be vested in any other person; or
 - D. the Trust to cease to operate or be deprived of funds before the expiration of the Term.

21.16 Power of Attorney

- (a) In consideration of the Landlord granting this Lease to the Tenant, the Tenant irrevocably appoints the Chief Executive Officer of the Landlord, the Minister for Lands and each and every duly appointed delegate of the Chief Executive Officer of the Landlord or the Minister for Lands (**Delegate**) jointly and severally, the agents and attorney of the Tenant to:
- (i) sign and lodge a withdrawal of any absolute caveat lodged by the Tenant in breach of clause 8.2(a);
 - (ii) sign and register a surrender of this Lease after Termination;
 - (iii) do all things required to register this Lease or lodge a caveat in relation to this Lease;
 - (iv) do all things necessary under the PPSA in relation to any Security interest referred to in this Lease; and
 - (v) execute any document on behalf of the Tenant that is required to effect any subordination under clause 21.21(a),
- the cost of which is to be paid by the Tenant on demand.
- (b) A person, including the Registrar of Titles of Western Australia, who deals with the attorney or a person purporting to be the attorney under clause 21.16(a) is:
- (i) entitled to rely on that person's execution of a document as conclusive evidence that:
 - A. the person is the Chief Executive Officer, Minister for Lands or a Delegate;
 - B. the power of attorney has come into effect;
 - C. the power of attorney has not been revoked;
 - D. the right or power being exercised or purportedly exercised is being properly exercised; and
 - E. the circumstances have arisen to authorise the exercise of that right and power; and
 - (ii) not required to make these enquiries about the attorney or the power.

21.17 Certificate to be Prima Facie Evidence

A certificate signed by or on behalf of the Landlord will be prima facie evidence of the facts stated in that certificate as to:

- (a) the amount of the Rent payable under this Lease; or

-
- (b) any other matter or thing arising under this Lease.

21.18 Western Australian Planning Commission Consent

This Lease is subject to and is conditional on the granting of any consent of the Western Australian Planning Commission required to be obtained under the provisions of the *Planning and Development Act 2005* (WA).

21.19 Section 18 Consent

- (a) This Lease is subject to and is conditional on the approval of the Minister for Lands under the *Land Administration Act 1997* (WA).
- (b) Anything required to be done under this Lease by the Minister for Lands under this Lease may be done by the Minister for Lands or the Minister for Lands' duly appointed delegate or duly appointed representative including execution of any other documents required to give further and greater effect to this Lease.
- (c) Nothing in this Lease will operate to relieve the Tenant's obligation of obtaining the prior written approval of the Minister for Lands under the *Land Administration Act 1997* (WA) to or in respect of a dealing to which that Act applies.
- (d) The Tenant must comply with the terms of the Minister for Lands' consent.

21.20 Commercial Building Disclosure

- (a) If the Landlord provided the Tenant with a copy of a BEEC in relation to the Building before the Tenant entered into this Lease, the Tenant acknowledges and agrees that:
- (i) the Tenant has relied entirely on its own enquiries as to whether the BEEC is Current and Valid and whether the information contained in the BEEC is accurate;
 - (ii) the Tenant must not make any Claim under or in connection with the *Building Energy Efficiency Disclosure Act 2010* (Cth) or the BEEC; and
 - (iii) the Landlord registered the BEEC before making any offer to, or inviting any offer from, the Tenant in respect of this Lease.
- (b) In clause 21.21(a), the terms *Current* and *Valid* have the meaning given to them under the *Building Energy Efficiency Disclosure Act 2010* (Cth).

21.21 Subordination

- (a) The Tenant agrees to subordinate this Lease to any mortgage of the Landlord's interest in the Land, to give the Landlord's mortgage priority over this Lease whether under the *Transfer of Land Act 1893* (WA) or otherwise if requested to do so by the Landlord at any time during the Term.
- (b) The Tenant must execute and deliver to the Landlord (without cost to the Tenant) on request by the Landlord, any document (including withdrawals of

caveat) as are required to effect any subordination under clause 21.21(a), within 10 Business Days after receipt from the Landlord.

- (c) If the Tenant fails to comply with clause 21.21(a), the Tenant, in consideration of the Landlord granting this Lease to the Tenant, irrevocably appoints the Landlord and each of its directors and officers jointly and severally as the agents and attorney of the Tenant to execute any document on behalf of the Tenant that is required to effect any subordination under clause 21.21(a).
- (d) The Tenant will not be required to effect any subordination of this Lease under this clause, unless the mortgagee first agrees in writing that, so long as the Tenant is not in default under this Lease:
 - (i) the Lease will not be terminated or modified (except as provided in this Lease);
 - (ii) the rights of the Tenant under this Lease will not be terminated or modified (except as provided in this Lease); and
 - (iii) the Tenant's possession of the Premises will not be disturbed or interfered with by any sale or Claim under that mortgage.

21.22 Exclusion of Statutory Provisions

- (a) The covenants, powers and provisions implied by virtue of sections 80 and 82 of the *Property Law Act 1969* (WA) and sections 92, 94 and 95 of the *Transfer of Land Act 1893* (WA) are excluded from, and do not apply to this Lease.
- (b) The use in this Lease of words in any form of words contained in the first column of Part II of the Twelfth Schedule of the *Transfer of Land Act 1893* (WA) do not imply any covenant under section 94 of that Act.

21.23 Indemnities

- (a) It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity under this Lease.
- (b) Each indemnity given under this Lease:
 - (i) is separate and independent from any other obligation of the Party giving it; and
 - (ii) is absolute, irrevocable, unconditional and payable on demand.
- (c) Each indemnity survives the termination of this Lease.

EXECUTED by the Parties to this Lease as a deed on the date specified on page 1.

Executed as a Deed for and on behalf
of the **TOWN OF EAST FREMANTLE** by persons
duly authorised to do so under section
9.49A(4) of the *Local Government Act 1995*
(WA).



.....
(Signed)

.....
(Signed)

.....
(Position)

.....
(Position)

.....
(Print Full Name)

.....
(Print Full Name)

Executed by
Belgravia Health & Leisure Group Pty Ltd
(ACN 005 087 463) as trustee for the Belgravia Leisure Unit Trust
pursuant to s127 of the *Corporations Act 2001* (Cth)

Director Signature

Director / Secretary Signature

Director Name (Please Print)

Director / Secretary Name (Please Print)

Executed by
Belgravia Group Pty Ltd
(ACN 050 138 246]
pursuant to s127 of the *Corporations Act 2001* (Cth)

Director Signature

Director / Secretary Signature

Director Name (Please Print)

Director / Secretary Name (Please Print)

Annexure A
Premises Plan

Annexure B
EFFC Sublease Area

Annexure C
EFFC Licence Area

Annexure D
EFBC Sublease Area

Annexure E
EFBC Licence Area

Annexure F
EFCC Sublease Area

Annexure G
EFCC Licence Area

Annexure H

EFP Licence Area

Annexure I
Community Garden Sublease Area

Annexure J
CAHS Sublease Area

Annexure K

Expert Determination Process

1. Expert

1.1 Definitions

The following definitions apply for the purposes of these provisions:

Dispute means any dispute in relation to a matter that this Lease refers to this Expert Determination Process;

Dispute Notice means a notice identifying the particulars of the Dispute;

Expert means, at the Landlord's discretion, the most appropriate of either:

- (a) a legal practitioner of not less than 15 years experience in commercial leasing in Perth;
- (b) an Accountant;
- (c) a quantity surveyor;
- (d) an architect; or
- (e) any other person with suitable qualifications and experience nominated by the Landlord acting reasonably.

1.2 Dispute

If a Dispute arises between the Parties, then either Party may give the other Party a Dispute Notice and the Parties must discuss the Dispute in good faith and explore resolution of the Dispute. If for any reason the Parties have not resolved the Dispute within 5 Business Days after the Dispute Notice was given, then the Dispute will be dealt with as set out in this clause.

1.3 Expert Determination

- (a) Following service of a Dispute Notice and failure to agree a resolution within the 5 Business Day period referred to in clause 1.2, an Expert will be appointed at the request of either Party to determine the Dispute.
- (b) If the person is unavailable or unwilling to act or the appointed Expert:
 - (i) is declared of unsound mind or mentally ill;
 - (ii) is declared bankrupt; or
 - (iii) is prevented by illness or incapacity or death or by being unavailable to determine a Dispute following the issue of a Dispute Notice, from performing its obligations under this Lease,

and the Parties are unable to agree in writing within 3 Business Days after the issue of the relevant Dispute Notice on the appointment of another person to act as the Expert for the purposes of a determination following the issue of a Dispute Notice, then either Party may request the President of the Australian Property Institute, Western Australia Division (or the President's nominee) to nominate an independent person to act as the Expert.

- (c) Unless the Parties agree otherwise, the Expert:
- (i) will act as an expert and not as an arbitrator;
 - (ii) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Expert;
 - (iii) must not be a former or current employee or representative of the Landlord or the Tenant;
 - (iv) must disclose fully to the Parties, before entering into an agreement to act as the Expert, any interest or duty which may conflict with his or her position; and
 - (v) will be entitled to refer aspects of the Dispute to a third person for the purpose of taking advice on a specific matter relating to the Dispute and will endeavour to ensure that any third party, servant, agent or consultant of the Expert will be subject to the same obligations of confidentiality as outlined in this clause 1.
- (d) Each Party:
- (i) may be legally represented at any hearing before the Expert;
 - (ii) will be entitled to produce to the Expert any materials or evidence which that Party believes is relevant to the Dispute; and
 - (iii) will make available to the Expert all materials requested by it and all other materials which are relevant to its determination.
- (e) The Expert will not be bound by the rules of evidence and, subject to the Expert abiding by the rules of natural justice, the Expert will have the power to inform himself or herself independently on the facts which the Dispute relates to and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (f) Subject to the Expert abiding by the rules of natural justice the Expert is to determine the procedures to be followed in resolving the Dispute and the Parties must co-operate promptly with those procedures, but the Expert must in any event:
- (i) provide the Parties with an equal and fair opportunity to make written submissions and if requested by either Party, conduct a hearing to allow the Parties to make oral submissions in support of their position;
 - (ii) provide written reasons for the Expert's determination;

-
- (iii) before handing down the determination, issue the determination in draft form to the Parties and allow the Parties an equal and fair opportunity (taking into account any urgency in resolving the Dispute) to lodge written submissions concerning the proposed determination which the Expert must consider before settling and handing down the Expert's determination.
 - (g) Subject to any privileges under Law, unless otherwise agreed by the Parties, all material and evidence made available for the purposes of the determination will be kept confidential, unless disclosure by a Party would be permitted under any provisions of this Lease.
 - (h) The Expert's determination:
 - (i) is final and binding on the Landlord and the Tenant;
 - (ii) will be made without delay and in any event within 20 Business Days after being appointed as an Expert, unless the Parties otherwise agree in writing; and
 - (iii) will determine what, if any, adjustments may be necessary between the Parties.
 - (i) The costs in relation to a determination by the Expert will be dealt with as follows:
 - (i) the remuneration of the Expert will be advanced by the Parties to the Dispute in equal shares, until agreement or a determination is made under clause 1.3(i)(ii) below as to who should pay for such remuneration;
 - (ii) unless the Parties specifically otherwise agree, the Expert will determine which Party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers a Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly.
 - (j) Nothing, while in Dispute, will relieve the Landlord or the Tenant from any of their obligations under this Lease.

1.4 Costs

Unless otherwise ordered by the Expert under clause 1.3, the Expert's costs must be paid by the Landlord and the Tenant in equal shares and each Party must pay its own legal and other costs of the Dispute.

1.5 Urgent interlocutory relief

Nothing in this clause 1 prevents a Party from seeking urgent injunctive, declaratory or other interlocutory relief from a court, if urgently required.

Annexure L

Venue Capacity Table

Facility within the Premises	Maximum Occupancy
Function Room, Food and Beverage Facilities and commercial tenancy space on ground floor of the Building	400 persons 20 employees
Home player changerooms on ground floor of the Building	40 male participants or 50 female participants
Away player changerooms on ground floor of the Building	40 male participants or 50 female participants
Health Club and external deck area of first floor of the Building	300 persons
Office and administration area on first floor of the Building	30 employees
Greens Teamroom/Storeroom	20 persons
Oval, grandstand section of Building, Croquet Courts, Bowling Greens and outdoor playground	660 persons
Kiosk and Amenities Building, skate zone and basketball court	50 persons

Dated this	day of	2023
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LESSOR/S SIGN HERE (Note 10)

Executed as a Deed for and on behalf of the **TOWN OF EAST FREMANTLE** by persons duly authorised to do so under section 9.49A(4) of the *Local Government Act 1995* (WA).

}

(Signed)	(Signed)
(Position)	(Position)
(Print Full Name)	(Print Full Name)

LESSEE/S SIGN HERE (Note 10)

Executed by
 Executed by
 Belgravia Health & Leisure Group Pty Ltd
 (ACN 005 087 463) as trustee for the Belgravia Leisure Unit Trust
 pursuant to s127 of the *Corporations Act 2001* (Cth)

Director Signature	Director / Secretary Signature
Director Name (Please Print)	Director / Secretary Name (Please Print)

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet, Form B1, should be used with appropriate headings. The boxed sections should only contain the words "see page ..."
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.
4. Where issued, the Duplicate Certificate of Title is required to be produced or if held by another party then arrangements must be made for its production.

NOTES

1. DESCRIPTION OF LAND

Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated.

Extent - Whole, part or balance of the land comprised in the Certificate of Title to be stated. If part, define by recital and/or sketch.

The Volume and Folio number to be stated.

2. LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS

In this panel show (subject to the next paragraph) those Limitations, interests, encumbrances and notifications affecting the land being leased that are recorded on the certificate(s) of title:

- (a) In the Second Schedule;
- (b) If no Second Schedule, that are encumbrances; (Unless to be removed by action or document before registration hereof)

Do not show any:

- (a) Easement Benefits or Restrictive/Covenant Benefits; or
- (b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg. If a mortgage is shown, do not show any partial discharges or any document affecting either). The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and plan/diagram number. Strata/survey-strata plan encumbrances are to be described as "Interests on strata/survey-strata plan".

If none show "nil".

3. LESSOR

State the full name of the Lessor/Lessors (REGISTERED PROPRIETOR) as shown in certificate of title and the address/addresses to which future notices can be sent.

4. LESSEE

State full name of the Lessee/Lessees and the address/addresses to which future notices can be sent. If two or more state tenancy e.g. Joint Tenants, Tenants in Common. If Tenants in Common specify shares.

5. TERM OF LEASE

Must exceed 3 years. Term to be stated in years, months and days or as the case may be. Commencement date to be stated. Options to renew to be shown.

6. RECITE ANY EASEMENTS TO BE CREATED

Here set forth any Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".

7. State amount of yearly rental in figures.

8. State term of payment.

9. Insert any Covenants required.

10. LESSOR/LESSEE EXECUTION

A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The full name, address and occupation of the witness must be stated. Execution by a corporation or body corporate must be in accordance with the Corporation Act.

OFFICE USE ONLY

LEASE

LODGED BY

ADDRESS

PHONE No.

FAX No.

REFERENCE No.

ISSUING BOX No.

PREPARED BY JACKSON McDONALD

ADDRESS 225 St Georges Terrace
PERTH WA 6000

Ref:

Phone: +61 8 9426 6611

Fax: +61 8 9321 2002

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED HERewith

- 1. _____ Received Items
- 2. _____ Nos.
- 3. _____
- 4. _____
- 5. _____
- 6. _____ Receiving Clerk

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.

EXAMINED