

## Agreement for Lease

relating to the Main Pitch and Football Facility at Britten's Field, Canal Way, Ilminster ,TA19 0DG

Dated 2016

- (1) Ilminster Town Council
- (2) Ilminster Sports Club Limited
- (3) D Paul & A Fish

V7 CW08-03-2016

## Contents

1	Interpretation	1
2	Agreement for lease	5
3	Timetable for engrossments	5
4	Landlord's Works	5
5	Practical Completion and Rectification Period	7
6	Long Stop Date	8
7	Insurance	8
8	Damage after Practical Completion	9
9	Landlord's obligations	9
10	Conditions	9
11	Deducing title	9
12	Title guarantee	10
13	Matters affecting the Property	10
14	Guarantor	11
15	Termination on Tenant's insolvency and material non-compliance by the Tenant	12
16	Consequences of termination	13
17	Completion of grant of the lease	13
18	VAT	14
19	Entire agreement	14
20	Joint and several liability	14
21	Notices	15
22	Third party rights	15
23	Governing law	15
24	Jurisdiction	16
	Appendix 1 Approved Documents in agreed form	17
	Appendix 2 Copy Building Contract OR Agreed form of Building Contract	18
	Appendix 3 Agreed form of Lease	19
	Appendix 4 Award Agreement dated 13 April 2015	20



**Between:**

- (1) **ILMINSTER TOWN COUNCIL** of Council Offices, North Street, Ilminster, Somerset, TA19 0DG (the "**Landlord**");
- (2) **ILMINSTER SPORTS CLUB LIMITED** incorporated and registered in England and Wales with company registration number 9473005 whose registered office is at Archie Gooch Centre, Canal Way, Ilminster, Somerset TA19 0DG (the "**Tenant**"); and
- (3) **DARREN PAUL** of 76 Summerlands Park Avenue Ilminster Somerset TA19 9BU and **ANDREW FISH** of 12 Greenway Dowlish Ford Ilminster Somerset TA19 0PJ (the "**Guarantor**").

**Background:**

- (A) The Landlord owns the freehold of the property known as the land and sports fields at Brittens Field, Canal Way, Ilminster and has agreed to grant the Tenant a lease of the property on the terms contained in this agreement.
- (B) The Landlord has agreed to undertake certain works at the property before the grant of the lease.

**It is agreed** as follows:

**1 Interpretation**

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

- |                             |   |
|-----------------------------|---|
| <b>"Approved Documents"</b> | all plans, specifications, drawings, engineering calculations, bills of quantity and other data for the Landlord's Works in the agreed form listed in Appendix 1 to this agreement including (where applicable): <ol style="list-style-type: none"><li>(a) any variations or amendments that may be agreed by the Landlord and the Tenant from time to time in accordance with clause 4.4; and</li><li>(b) any minor variations permitted under clause 4.5.</li></ol> |
| <b>"Base Rate"</b>          | the higher of 5% and the base rate from time to time of HSBC Bank PLC;  |
| <b>"Building Contract"</b>  | a building contract for the Landlord's Works dated 1 October 2015 between the Landlord and the Building Contractor a copy of which is annexed to this agreement;  |

<b>"Building Contractor"</b>	M W Layzell (Builders) Ltd of The Orchard Office Dillington Ilminster Somerset TA19 9EQ or such other suitably experienced and competent building contractor as may be appointed by the Landlord to carry out the Landlord's Works together with any replacement building contractor that may be appointed by the Landlord in accordance with the terms of the Building Contract;
<b>"CDM Regulations"</b>	the Construction (Design and Management) Regulations 2015;
<b>"Certificate of Making Good"</b>	the Contract Administrator's certificate or written statement issued in accordance with the Building Contract certifying that any defects, shrinkages or faults appearing in the Landlord's Works during the Rectification Period and for which the Building Contractor was responsible under the Building Contract have been made good;
<b>"Condition"</b>	any one of the Part 1 Conditions;
<b>"Contract Administrator"</b>	Mr P Durman of Building Consultancy Services (NP) Limited 10 Holly Close North Petherton Somerset TA6 6TY or such other person as may be appointed as a replacement contract administrator for the time being by the Landlord in relation to this agreement and the Building Contract;
<b>"Contract Rate"</b>	4% per annum above the Base Rate;
<b>"Event of Default"</b>	any of the events set out in clause 15.1;
<b>"Grant Funding Body"</b>	means Sport England of Sport Park, 3 Oakwood Drive, Loughborough, LE11 3QF;
<b>"Grant Body Funding Agreement"</b>	means the agreement dated 13 April 2015 made between the Grant Funding Body and the Landlord, a copy of which is annexed to this agreement;
<b>"Landlord's Conveyancer"</b>	Clarke Willmott, Blackbrook Gate, Blackbrook Park Avenue, Taunton, TA1 2PG (Reference: 00415435.00003) ;
<b>"Landlord's Works"</b>	the works to be carried out by the Landlord at the Property before the grant of the Lease;
<b>"Lease"</b>	a lease in the agreed form annexed to this agreement subject only to any minor amendments necessitated by any variations made to the Approved Documents under

	clause 4.4 or clause 4.5;
<b>"Lease Completion Date"</b>	the day that is ten working days after the Practical Completion Date;
<b>"Long Stop Date"</b>	25 June 2016;
<b>"Part 1 Conditions"</b>	part 1 of the Standard Commercial Property Conditions (Second Edition);
<b>"Part 2 Conditions"</b>	part 2 of the Standard Commercial Property Conditions (Second Edition);
<b>"Planning Permission"</b>	full planning permission dated 18 December 2014 from the South Somerset District Council under reference number 14/04748/FUL together with all requisite approvals already issued in connection with it and any waivers, relaxations or variations of any of its terms;
<b>"Grant Body Funding Specifications"</b>	means the specifications and requirements of the Grant Funding Body as set out in the agreement dated 13 April 2015 made between the Grant Funding Body and the Landlord a copy of which is annexed to this agreement;
<b>"Practical Completion Certificate"</b>	the Contract Administrator's certificate or written statement issued in accordance with the Building Contract certifying that the Landlord's Works are practically complete according to the terms of the Building Contract and setting out the date on which practical completion occurred;
<b>"Practical Completion Date"</b>	the date stated in the Practical Completion Certificate;
<b>"Property"</b>	that part of the land and football facility at Britten's Field, Canal Way, Ilminster TA19 0DG as more particularly defined in the Lease;
<b>"Recommendation Report"</b>	a report as defined in regulation 4 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118);
<b>"Rectification Period"</b>	the defects liability period or rectification period for the making good of defects, shrinkages or other faults in the Landlord's Works under the Building Contract;
<b>"Rent"</b>	the initial rent of £TBC per annum (subject to review) exclusive of VAT;
<b>"Rent Commencement Date"</b>	the Lease Completion Date;

<b>"Requisite Consents"</b>	the Reserved Matters, building regulation approvals, by-law approvals, and any other consents, licences and authorisations required from any competent authority, statutory undertaker or person for the carrying out of the Landlord's Works or, as the case may be, the Tenant's Works;
<b>"Reserved Matters"</b>	all matters remaining to be approved under the terms of the Planning Permission;
<b>"Target Date"</b>	27 May 2016 (as may be extended in accordance with clause 4.2);
<b>"Tenant's Conveyancer"</b>	Broomhead & Saul Solicitors of 11 & 13 East Street, Ilminster, Somerset TA19 0AE (Patrick Wilding);
<b>"VAT"</b>	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **"writing"** or **"written"** includes fax but not email.
- 1.11 References to a document in **"agreed form"** are to that document in the form agreed by the parties.
- 1.12 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied

or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

- 1.13 Unless the context otherwise requires, references to clauses, Schedules and Annexes are to the clauses, Schedules and Annexes of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.16 Unless this agreement otherwise expressly provides, a reference to the "**Property**" or the "**Landlord's Works**" or the "**Tenant's Works**" is to the whole and any part of them.
- 1.17 Any reference to the Landlord's consent or approval being required is to a consent or approval in writing which must be obtained before the relevant act is taken or event occurs.

## **2 Agreement for lease**

- 2.1 In consideration of the Tenant's and Guarantors' obligations under this agreement, the Landlord shall grant to the Tenant and the Tenant shall accept from the Landlord the Lease on the terms set out in this agreement. No purchase price, premium, or deposit is payable.
- 2.2 The Tenant cannot require the Landlord to grant the Lease to any person other than the Tenant (here meaning Ilminster Sports Club Limited incorporated and registered in England and Wales with company number 9473005 only).
- 2.3 The Tenant cannot assign, sublet, charge, or otherwise share or part with the benefit of this agreement whether in relation to the whole or any part of the Property.
- 2.4 Conditions 1.5 and 2.2 do not apply to this agreement.

## **3 Timetable for engrossments**

The Landlord's Conveyancer shall send the engrossed counterpart Lease to the Tenant's Conveyancer within five working days after the date of Practical Completion.

## **4 Landlord's Works**

- 4.1 The Landlord shall apply for and use reasonable endeavours to obtain the Requisite Consents in respect of the Landlord's Works. The Landlord shall enter into the Building Contract once such of the Requisite Consents in respect of the Landlord's Works have been obtained as enable the Landlord's Works to commence.
- 4.2 The Landlord shall use reasonable endeavours to procure that the Practical Completion Date occurs by the Target Date which shall be extended commensurate with any extensions of time:



- 4.2.1 allowed by the Contract Administrator under the terms of the Building Contract; and/or
  - 4.2.2 certified by the Contract Administrator as being fair and reasonable, having regard to the delay in question, where completion of the Landlord's Works is delayed due to an event or cause that is beyond the Landlord's reasonable control.
- 4.3 The Landlord shall use reasonable endeavours to procure that the Landlord's Works are carried out:
- 4.3.1 with due diligence and in a good and workmanlike manner;
  - 4.3.2 using only good quality materials and well-maintained plant;
  - 4.3.3 in accordance with this agreement, the Approved Documents, the Planning Permission and the Requisite Consents in respect of the Landlord's Works;
  - 4.3.4 in accordance with the Grant Funding Body's Agreement;
  - 4.3.5 in accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;
  - 4.3.6 in compliance with all relevant British Standards, codes of practices and good building practice; and
  - 4.3.7 by selecting and using materials so as to avoid known hazards to the health and safety of any person and to ensure the long term integrity of the Property.
- 4.4 The Landlord shall not, (subject to clause 4.5), vary, alter, add to or remove anything from the Approved Documents without the Tenant's consent (such consent not to be unreasonably withheld or delayed).
- 4.5 The Landlord may make minor variations to the Approved Documents without the Tenant's consent provided that:
- 4.5.1 the variations are insubstantial and immaterial;
  - 4.5.2 the variations are in accordance with the Planning Permission, the Requisite Consents in respect of the Landlord's Works and any statutory requirements;
  - 4.5.3 any substitute materials used are of an equal or better quality and suitability to those originally specified;
  - 4.5.4 the variations do not delay the completion of the Landlord's Works;
  - 4.5.5 the Landlord informs the Tenant of the variations within a reasonable time; and
  - 4.5.6 the variations are required by any local or competent authority or statutory undertaking as a condition of the grant or continuance of any of the Requisite Consents in respect of the Landlord's Works.

## **5 Practical Completion and Rectification Period**

- 5.1 The Landlord shall procure that the terms of the Contract Administrator's professional appointment require the Contract Administrator to act impartially when exercising the power to issue certificates and award extensions of time under the Building Contract and this agreement.
- 5.2 The Landlord shall use reasonable endeavours to procure that the Contract Administrator:
- 5.2.1 gives at least five working days' notice to the Tenant of the Contract Administrator's intention to inspect the Landlord's Works for the purpose of issuing the Practical Completion Certificate and allows the Tenant to attend the inspection and make representations either during the inspection or in writing immediately thereafter; and
- 5.2.2 without fettering the discretion of the Contract Administrator in carrying out duties under the Building Contract, takes proper account of any representations that are made in accordance with clause 5.2.1 when considering whether to issue the Practical Completion Certificate in accordance with the terms of the Building Contract.
- 5.3 The Landlord shall use reasonable endeavours to procure that the Contract Administrator gives a copy of the Practical Completion Certificate to the Tenant as soon as practicable after its issue.
- 5.4 The issue of the Practical Completion Certificate shall be conclusive evidence binding on the parties that the Landlord's Works have been completed in accordance with the terms of this agreement, subject to the Landlord's obligations during the Rectification Period.
- 5.5 The Landlord shall use reasonable endeavours to enforce the Building Contractor's obligations under the Building Contract to remedy any defects, shrinkages or faults appearing in the Landlord's Works during the Rectification Period.
- 5.6 During the Rectification Period, the Tenant may make written representations to the Contract Administrator identifying defects, shrinkages or faults in the Landlord's Works which the Building Contractor is obliged to remedy in accordance with the Building Contract. Without fettering the discretion of the Contract Administrator in carrying out duties under the Building Contract, the Landlord shall use reasonable endeavours to ensure that the Contract Administrator takes proper account of any such representations.
- 5.7 The Landlord shall use reasonable endeavours to procure that the Contract Administrator:
- 5.7.1 gives at least five working days' notice to the Tenant of the Contract Administrator's intention to inspect the Landlord's Works for the purpose of issuing the Certificate of Making Good and allows the Tenant to attend the inspection and make representations either during the inspection or in writing immediately thereafter; and
- 5.7.2 without fettering the discretion of the Contract Administrator in carrying out duties under the Building Contract, takes proper account of any representations that are made in accordance with clause 5.7.1 when considering whether to issue the Certificate of Making Good in accordance with the terms of the Building Contract.

- 5.8 The Landlord shall use reasonable endeavours to procure that the Contract Administrator gives a copy of the Certificate of Making Good to the Tenant as soon as practicable after its issue.

## **6 Long Stop Date**

- 6.1 If the Practical Completion Date has not occurred by 4.00 pm on the Long Stop Date, either the Landlord or the Tenant may, at any time after the Long Stop Date but before the Practical Completion Date, give notice to the other that, unless the Practical Completion Date occurs within twenty working days of the receipt of that notice (time being of the essence), it may rescind this agreement. If the Practical Completion Date does not occur within twenty working days of receipt of that notice then it may, by further notice rescind this agreement with immediate effect. Such rescission shall be without prejudice to the obligations in clause 6.2 and the rights of each party in respect of any earlier breach of this agreement.
- 6.2 If the agreement is rescinded pursuant to clause 6.1, the Tenant shall immediately cancel all entries relating to this agreement registered against the Landlord's title.

## **7 Insurance**

- 7.1 From the date of this agreement until the Practical Completion Date, the Landlord shall insure or shall procure that the Building Contractor insures, the Landlord's Works, the Property and all plant and unfixed materials and goods delivered to or placed on or adjacent to the Property and intended for incorporation in the Landlord's Works against all perils resulting in loss or damage thereto on customary contractors' all risks terms:

7.1.1 in the joint names of the Landlord and the Building Contractor; and

7.1.2 for not less than their full reinstatement value (taking into account the progress of the Landlord's Works) together with all site clearance and professional fees incurred in connection with such reinstatement

and if insurance is taken out in compliance with clause 7.3 and insurance options A, B or C of Schedule 3 to the Building Contract the Landlord shall be deemed to have complied with this obligation.

- 7.2 In the event of any loss or damage occurring before the Practical Completion Date to the Landlord's Works, the Property, plant, materials or goods so insured, the Landlord shall procure that their reinstatement or replacement is carried out diligently and with all reasonable speed. The Landlord shall apply the proceeds of the insurance towards such reinstatement or replacement and shall make good any deficiency out of the Landlord's own funds.
- 7.3 The Landlord shall maintain, or procure that the Building Contractor maintains, insurance in respect of injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £10,000,000 for any one occurrence or series of occurrences arising out of the same event. Such insurance shall be maintained from the date of this agreement until the end of the Rectification Period.

7.4 The Landlord and the Tenant mutually agree not knowingly to do or permit anything to be done that may render any insurance policy void or voidable.

7.5 Conditions 7.1.1, 7.1.2, 7.1.3 and 7.1.4(b) do not apply to this agreement.

## **8 Damage after Practical Completion**

8.1 The Tenant shall not be entitled to refuse to complete or to delay completion of the grant of the Lease due to any event occurring after the Practical Completion Date that results in:

8.1.1 any damage to the Property or any part of it; or

8.1.2 any damage to the means of access to the Property; or

8.1.3 any deterioration in the Property's condition.

8.2 The provisions in the Lease relating to insurance of the Property shall apply from the Practical Completion Date to the date of grant of the Lease.

## **9 Landlord's obligations**

9.1 The obligations in clause 4, clause 5, and clause 7 are personal and binding only on Ilminster Town Council of Council Offices, North Street, Ilminster, Somerset TA19 0DG.

9.2 Ilminster Town Council shall be released from all liability in respect of its obligations referred to in clause 9.1 after a period of six months after the Practical Completion Date, except in relation to any claim made against or notified to it prior to the end of that period.

## **10 Conditions**

10.1 The Part 1 Conditions are incorporated in this agreement, in so far as they:

10.1.1 are applicable to the grant of a lease;

10.1.2 are not inconsistent with the other clauses in this agreement; and

10.1.3 have not been modified or excluded by any of the other clauses in this agreement.

10.2 The Part 2 Conditions are not incorporated in this agreement.

10.3 Condition 1.1.1(d) is amended so that "completion date" means the "Lease Completion Date" as defined in this agreement.

10.4 Condition 1.1.1(e) is amended so that reference to the contract rate in Condition 1.1.1(e) refers instead to the Contract Rate as defined in this agreement.

10.5 Condition 1.1.4(a) does not apply to this agreement.

## **11 Deducing title**

11.1 The Landlord's freehold title to the Property has been deduced to the Tenant's Conveyancer before the date of this agreement .

11.2 The Tenant is deemed to have full knowledge of the Landlord's title and is not entitled to raise any objection, enquiry or requisition in relation to it.

11.3 Conditions 6.1, 6.2, 6.3, 6.4.2, 10.2.4, 10.2.5, and 10.3 do not apply to this agreement.

## **12 Title guarantee**

12.1 Subject to the other provisions of this clause, the Landlord shall grant the Lease with full title guarantee.

12.2 The implied covenants for title are modified so that:

12.2.1 the covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 (LP(MP)A 1994) shall not extend to costs arising from the Tenant's failure to:

- (a) make proper searches; or
- (b) raise requisitions on title or on the results of the Tenant's searches before the date of this agreement (or by completion in the case of searches referred to in clause 13.1); and

12.2.2 the covenant set out in section 3(3) of the LP(MP)A 1994 shall extend only to charges or encumbrances created by the Landlord.

12.3 Condition 6.6.2 does not apply to this agreement.

## **13 Matters affecting the Property**

13.1 The Landlord shall grant the Lease to the Tenant free from encumbrances other than:

13.1.1 any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by HM Land Registry as at 15 May 2015 at 15:32:40 under title number ST63038.

13.1.2 all matters contained or referred to in the Lease;

13.1.3 any matters discoverable by inspection of the Property before the date of this agreement;

13.1.4 any matters which the Landlord does not and could not reasonably know about;

13.1.5 any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent tenant would have made before entering into this agreement;

13.1.6 public requirements;

13.1.7 any matters which are, or (where the Lease will not be registered) would be, unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002;

13.2 The Tenant is deemed to have full knowledge of the matters referred to in clause 13.1 and shall not raise any enquiry, objection, requisition or claim in respect of any of them.

13.3 Conditions 3.1.1, 3.1.2, 3.1.3, 3.2.1, 3.3 and 6.6.3 do not apply to this agreement.

#### **14 Guarantor**

14.1 In consideration of the Landlord having entered into this agreement at the request of the Guarantor, the Guarantor guarantees and agrees with the Landlord that:

14.1.1 the Tenant shall perform the Tenant's obligations in this agreement;

14.1.2 if the Tenant fails to perform any of its obligations under this agreement, the Guarantor shall perform them (including, if required to do so by notice in writing from the Landlord, entering into the Lease in accordance with the terms of this agreement as if the Guarantor were named in the Lease as tenant in place of the Tenant); and

14.1.3 if:

(a) an Event of Default occurs in respect of the Tenant or this agreement is disclaimed following the insolvency of the Tenant; and

(b) within three months of such Event of Default or disclaimer the Landlord gives notice in writing to the Guarantor requiring the Guarantor to enter into the Lease as the tenant under the Lease in accordance with this agreement;

then with effect from such notice all obligations of the Tenant under this agreement shall be deemed to have been entered into by the Guarantor as though it were named as tenant in place of the Tenant under this agreement and the Guarantor shall enter into the Lease in accordance with the terms of this agreement as tenant in place of the Tenant.

14.2 In consideration of the Landlord having entered into this agreement at the request of the Guarantor, the Guarantor agrees with the Landlord as a separate and independent primary obligation to indemnify the Landlord against any failure by the Tenant to observe or perform any of the Tenant's obligations in this agreement.

14.3 The liability of the Guarantor shall not be affected by:

14.3.1 any time or indulgence granted by the Landlord to the Tenant;

14.3.2 any delay or forbearance by the Landlord in enforcing the payment of any sums or the observance or performance of any of the Tenant's obligations in this agreement or in making any demand in respect of any of them;

14.3.3 the Landlord exercising any right or remedy against the Tenant for any failure to pay any sums due under this agreement or to observe or perform the Tenant's obligations in this agreement;

14.3.4 a release or compromise of the liability of any one of the persons who is the Guarantor, or the grant of any time or concession to any one of them;

- 14.3.5 any legal limitation or disability on the Tenant or any invalidity or irregularity of any of the Tenant's obligations under this agreement or any unenforceability of any of them against the Tenant;
- 14.3.6 the Tenant being dissolved, or being struck off the register of companies or otherwise ceasing to exist, or, if the Tenant is an individual, by the Tenant dying or becoming incapable of managing its affairs; or
- 14.3.7 any other act or omission except an express written release by deed of the Guarantor by the Landlord.

## **15 Termination on Tenant's insolvency and material non-compliance by the Tenant**

- 15.1 An Event of Default is any of the following:
  - 15.1.1 the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant;
  - 15.1.2 the making of an application for an administration order or the making of an administration order in relation to the Tenant;
  - 15.1.3 the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant;
  - 15.1.4 the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant;
  - 15.1.5 the commencement of a voluntary winding-up in respect of the Tenant except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
  - 15.1.6 the making of a petition for a winding-up order or a winding-up order in respect of the Tenant;
  - 15.1.7 the striking-off of the Tenant from the Register of Companies or the making of an application for the Tenant to be struck-off; or
  - 15.1.8 the Tenant otherwise ceasing to exist.
- 15.2 If an Event of Default occurs, the Landlord may, at any time prior to grant of the Lease, determine this agreement by giving written notice to the Tenant.
- 15.3 If at any time there is any material non-compliance by the Tenant with any of its obligations under this agreement and such default is either:
  - 15.3.1 not capable of being remedied; or

15.3.2 is capable of remedy but the Tenant has not remedied the default within five working days (or such longer period as may be reasonable in the circumstances) after service on the Tenant by the Landlord of a notice specifying the default;

the Landlord may, at any time prior to grant of the Lease, determine this agreement by giving written notice to the Tenant.

## **16 Consequences of termination**

16.1 If the Landlord gives notice to terminate under clause 15.2 or clause 15.3:

16.1.1 subject to clause 16.1.2, this agreement shall be terminated with immediate effect from the date of the Landlord's notice and none of the parties shall have any further rights or obligations under this agreement save for:

- (a) the rights of any party in respect of any earlier breach of this agreement; and
- (b) the obligations in the clauses referred to in clause 16.1.2;

16.1.2 clause 14.2 and clause 16 shall continue in force notwithstanding the termination of this agreement under clause 16.1.1;

16.1.3 the Tenant shall immediately cancel all entries relating to this agreement registered against the Landlord's title and

16.1.4 the Tenant shall immediately:

- (a) vacate the Property;
- (b) remove all of the Tenant's chattels from the Property;
- (c) (to the extent required by the Landlord) remove the Tenant's Works or any other fixtures constructed by or for the Tenant;
- (d) make good all damage caused by the Tenant as a result of such removal.

## **17 Completion of grant of the lease**

17.1 Completion of the grant of the Lease shall take place on the Lease Completion Date.

17.2 On completion, the Tenant shall pay to the Landlord Annual Rent in accordance with the Lease for the period from and including the Lease Completion Date to and including the day before the next Rent Payment Date thereafter.

17.3 If completion is delayed due to the Tenant's default or the Tenant fails to pay any sum due under this agreement in full on completion, the Tenant shall pay interest in addition to damages for losses incurred by the Landlord as a result of the delayed completion. The interest shall be payable at the Contract Rate on any unpaid amount for the period from the Lease Completion Date to the date of actual payment.

17.4 Condition 8.7 is amended to read: "The Tenant is to pay the money due on completion to the Landlord's Conveyancer by a method that gives immediately available funds".



17.5 Condition 9.3 does not apply to this agreement.

## **18 VAT**

18.1 Each amount stated to be payable under or pursuant to this agreement is exclusive of VAT (if any).

18.2 If any VAT is chargeable on any supply made by one party to the other party under or pursuant to this agreement, the paying party shall pay to the other party an amount equal to that VAT.

18.3 Condition 1.4 does not apply to this agreement.

## **19 Entire agreement**

19.1 This agreement and the documents annexed to it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

19.2 The Tenant acknowledges that:

19.2.1 in entering into this agreement, the Tenant has not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than:

- (a) as expressly set out in this agreement or the documents annexed to it; or
- (b) in any written replies which the Landlord's Conveyancer has given to any written enquiries raised by the Tenant's Conveyancer before the date of this agreement.

19.2.2 no representation or warranty is given or is to be implied by:

- (a) the Landlord entering into this agreement; or
- (b) any step taken by or on behalf of the Landlord in connection with this agreement as to the suitability of the Property for the Tenant's Works;

19.2.3 nothing in this clause 19.2 shall limit or exclude any liability for fraud.

19.3 Condition 9.1.1 is varied to read "If any plan or statement in the agreement or in written replies which the Landlord's Conveyancer has given to any written enquiries raised by the Tenant's Conveyancer before the date of this agreement is or was misleading or inaccurate due to any error or omission, the remedies available are as follows."

## **20 Joint and several liability**

20.1 Where the Tenant comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Tenant arising under this agreement. The Landlord may take action against, or release or compromise the liability of, or grant time

or other indulgence to, any one of those persons without affecting the liability of any other of them.

20.2 Condition 1.2 does not apply to this agreement.

## **21 Notices**

21.1 Any notice or other communication required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:

21.1.1 Landlord: Ilminster Town Council of Council Offices, North Street, Ilminster, Somerset TA19 0DG

21.1.2 Tenant: Ilminster Sports Club Limited of Archie Gooch Centre, Canal Way, Ilminster, Somerset TA19 0DG

or as otherwise specified by the relevant party by notice in writing to each other party.

21.2 Any notice or other communication shall be deemed to have been duly received:

21.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or

21.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second working day after posting; or

21.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21.3 A notice or other communication required to be given under this agreement shall not be validly given if sent by email.

21.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

21.5 Condition 1.3 does not apply to this agreement.

## **22 Third party rights**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **23 Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**24 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

As witness the hands of the parties or their duly authorised representatives the date first above written

**Signed by** )  
for and on behalf of ) \_\_\_\_\_  
**Iminster Town Council** )

**Signed by** )  
for and on behalf of ) \_\_\_\_\_  
**Iminster Sports Club Limited** )

**Signed by DARREN PAUL** )  
 ) \_\_\_\_\_

**Signed by ANDREW FISH** )  
 ) \_\_\_\_\_

## Appendix 1

### Approved Documents in agreed form

DRWG NO ITFC4

DRWG NO ITFC5

DRWG NO ITFC6

DRWG NO ITFC7

DRWG NO ITFCP9

DRWG NO ITFCP10

DRWG NO ITFCP11

DRWG NO ITFCP12

DRWG NO ITFCP13

DRWG NO ITFCP14

Planning consent 14/04748/FUL

The application for the planning consent dated 26/10/2014 and the documents attached

**Appendix 2**

**Copy Building Contract**

**Appendix 3**

**Agreed form of Lease**

**Appendix 4**

**Award Agreement dated 13 April 2015**