

*clarke
willmott

Agreement for Lease

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

Dated 2015

- (1) Ilminster Town Council
- (2) Ilminster Sports Club Limited

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This Agreement is made on

2015

Between:

- (1) ILMINISTER TOWN COUNCIL of Council Offices, North Street, Ilminster, Somerset, TA19 0DG (the "Landlord"); and
- (2) ILMINISTER SPORTS CLUB LIMITED Incorporated and registered in England and Wales with company registration number 0473005 whose registered office is at Archie Gooch Centre, Canal Way, Ilminster, Somerset TA19 0DG (the "Tenant").

Background:

- (A) The Landlord owns the freehold of the property known as the land and sports fields at Britters 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 lease shall contain an agreement between the Landlord and the Tenant that the provisions of sections 24-28 of the Landlord and Tenant Act 1954 will be excluded in relation to the tenancy to be created by the lease.]
- (C) 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:

"Approved Documents"	all plans, specifications, drawings, engineering calculations, bills of quantity and other data for the Landlord's Works in the agreed form annexed to this agreement including (where applicable): <ol style="list-style-type: none">(a) any variations or amendments that may be agreed by the Landlord and the Tenant from time to time in accordance with clause 5.4; and(b) any minor variations permitted under clause 5.5.
"Base Rate"	the higher of 5% and the base rate from time to time of HSBC Bank PLC;
"Building Contract"	a building contract for the Landlord's Works dated DATE TBC between the Landlord and the Building Contractor a copy of which is annexed to this agreement;

Comment [BKL]: This depends on Clause 31 of the Lease and whether it is retained. ref: my email of 14 May 2015 at 14:05 and your reply email of 16.06.2015 at 14:56.

"Building Contractor"	NAME AND ADDRESS TBC 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;
"CDM Regulations"	the Construction (Design and Management) Regulations 2015;
"Certificate of Making Good"	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;
"Collateral Warranties"	deeds of collateral warranty from the parties identified in the relevant annex to this agreement [together with any replacement party that may from time to time be appointed by the Landlord or the Building Contractor], such deeds to be in the agreed forms annexed to this agreement [with such amendments as may be approved by the Tenant (such approval not to be unreasonably withheld)];
"Condition"	any one of the Part 1 Conditions;
"Contract Administrator"	NAME AND ADDRESS TBC 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;
"Contract Rate"	4% per annum above the Base Rate;
"Event of Default"	any of the events set out in clause 16.1;
"Grant Funding Body"	means Sport England of Sport Park, 3 Oakwood Drive, Loughborough, LE11 3QF;
"Grant Body Funding Agreement"	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;
"Landlord's Conveyancer"	Clarke Willmott, Blackbrook Gate, Blackbrook Park Avenue, Taunton, TA1 2PG (Reference: 00415435.00002);

Comment [BK2]: Please confirm if the building contractor will be granting any collateral warranties. This depends on what is being built. A collateral warranty is a contract between a person with an interest in the project under construction or the completed project and a person who was involved in the project's design, management and/or construction. Please provide more information as to the project works and whether there will be any collateral warranties in order that I may advise appropriately.

Comment [BK3]: I note that the award granted by Sport England will be £54,882.00 towards the total project cost of £588,536.00. Can you please clarify whether there be any further grant awards? Who will be financing the remainder cost of the project?

Comment [BK4]: If there are going to be further grant awards then we will need to copies of any agreements/specifications or requirements of any such grant awarding bodies. This is necessary to ensure that the lease we end up with satisfies all of those requirements. We will need to amend the lease to bring it in line with any such requirements.

"Landlord's Works"	the works to be carried out by the Landlord at the Property before the grant of the Lease;
"Lease"	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 5.4 or clause 5.5;
"Lease Completion Date"	the day that is ten working days after the Practical Completion Date;
"Long Stop Date"	TBC;
"LTA 1954"	Landlord and Tenant Act 1954;
"Part 1 Conditions"	part 1 of the Standard Commercial Property Conditions (Second Edition);
"Part 2 Conditions"	part 2 of the Standard Commercial Property Conditions (Second Edition);
"Planning Permission"	OUTLINE OR FULL TBC planning permission dated DATE TBC from the South Somerset District Council under reference NUMBER TBC together with all requisite approvals already issued in connection with it and any waivers, relaxations or variations of any of its terms;
"Grant Body Funding Specifications"	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;
"Practical Completion Certificate"	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;
"Practical Completion Date"	the date stated in the Practical Completion Certificate;
"Property"	that part of the land and football facility at Britten's Field, Canal Way, Ilminster TA19 0DG as more particularly defined in the Lease;
"Recommendation Report"	a report as defined in regulation 4 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118);

Comment [BK5]: Please confirm details of the planning permission.

"Rectification Period"	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;
"Rent"	the initial rent of £TBC per annum (subject to review) exclusive of VAT;
"Rent Commencement Date"	the Lease Completion Date;
"Requisite Consents"	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;
"Reserved Matters"	all matters remaining to be approved under the terms of the Planning Permission;
"Target Date"	DATE TBC (as may be extended in accordance with clause 5.2);
"Tenant's Conveyancer"	NAME, ADDRESS, REFERENCE TBC;
"Tenant's Surveyor"	NAME, ADDRESS, REFERENCE TBC;
"VAT"	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", "includes", "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 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

- 3.1 The Landlord's Conveyancer shall send the engrossed counterpart Lease to the Tenant's Conveyancer within five working days after the date of this agreement.

Comment [BK5]: How far should the Council be accepting any obligations to the Tenant (for example will the Tenant's consent be required for any amendments to the plans/specifications etc? Please confirm.

4 [Exclusion of security of tenure

4.1 [The parties confirm that

4.1.1 the Landlord served a notice on the Tenant, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Lease, [not less than 14 days] before this agreement was entered into (a certified copy of which notice is annexed to this agreement); and

4.1.2 [the Tenant] [NAME OF DECLARANT], who was duly authorised by the Tenant to do so], made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954 (a certified copy of which [statutory] declaration is annexed to this agreement).]

4.2 [The parties confirm that

4.2.1 the Landlord served a notice on the Guarantor, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Lease, [not less than 14 days] before this agreement was entered into (a certified copy of which notice is annexed to this agreement); and

4.2.2 [the Guarantor] OR [NAME OF DECLARANT], who was duly authorised by the Guarantor to do so], made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954 (a certified copy of which [statutory] declaration is annexed to this agreement).]

5 Landlord's Works

5.1 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.

5.2 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:

5.2.1 allowed by the Contract Administrator under the terms of the Building Contract; and/or

5.2.2 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.

5.3 The Landlord shall use reasonable endeavours to procure that the Landlord's Works are carried out:

5.3.1 with due diligence and in a good and workmanlike manner;

5.3.2 using only good quality materials and well-maintained plant;

Comment [BK7]: This clause depends on whether Clause 31 of the draft Lease will be retained ref: my email of 14 May 2015 at 14:05 and your reply email of 16.06.2015 at 14:55.

5.3.3 In accordance with this agreement, the Approved Documents, the Planning Permission and the Requisite Consents in respect of the Landlord's Works;

5.3.4 In accordance with the Grant Funding Body's Agreement;

5.3.5 In accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;

5.3.6 In compliance with all relevant British Standards, codes of practices and good building practice; and

5.3.7 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.

5.4 The Landlord shall not, (subject to clause 5.5), 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).

5.5 The Landlord may make minor variations to the Approved Documents without the Tenant's consent provided that:

5.5.1 the variations are insubstantial and immaterial;

5.5.2 the variations are in accordance with the Planning Permission, the Requisite Consents in respect of the Landlord's Works and any statutory requirements;

5.5.3 any substitute materials used are of an equal or better quality and suitability to those originally specified;

5.5.4 the variations do not delay the completion of the Landlord's Works;

5.5.5 the Landlord informs the Tenant of the variations within a reasonable time; and

5.5.6 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.

6 Practical Completion and Rectification Period

6.1 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.

6.2 The Landlord shall use reasonable endeavours to procure that the Contract Administrator:

6.2.1 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 and the Tenant's Surveyor to attend the inspection and make representations either during the inspection or in writing immediately thereafter; and

Comment [BKS]: Should the Council have an obligation to the Tenant to comply with the terms of this agreement? Please confirm.

- 6.2.2 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 6.2.1 when considering whether to issue the Practical Completion Certificate in accordance with the terms of the Building Contract.
- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 During the Rectification Period, the Tenant or the Tenant's Surveyor 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.
- 6.7 The Landlord shall use reasonable endeavours to procure that the Contract Administrator:
- 6.7.1 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 and the Tenant's Surveyor to attend the inspection and make representations either during the inspection or in writing immediately thereafter; and
- 6.7.2 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 6.7.1 when considering whether to issue the Certificate of Making Good in accordance with the terms of the Building Contract.
- 6.8 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.
- 6.9 The Landlord shall use reasonable endeavours to procure the grant of the Collateral Warranties in favour of the Tenant prior to the Lease Completion Date but the delay in the grant of the Collateral Warranties in favour of the Tenant shall not entitle the Tenant to delay completion of the Lease.

7 Long Stop Date

- 7.1** 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 7.2 and the rights of each party in respect of any earlier breach of this agreement.
- 7.2** If the agreement is rescinded pursuant to clause 7.1, the Tenant shall immediately cancel all entries relating to this agreement registered against the Landlord's title.

8 Insurance

- 8.1** 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 unfixured 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:
- 8.1.1** In the joint names of the Landlord and the Building Contractor; and
- 8.1.2** 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 6.7 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.
- 8.2** 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.
- 8.3** 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 £TBC 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.
- 8.4** 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.
- 8.5** Conditions 7.1.1, 7.1.2, 7.1.3 and 7.1.4(b) do not apply to this agreement.

9 Damage after Practical Completion

9.1 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:

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

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

9.1.3 any deterioration in the Property's condition.

9.2 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.

10 Landlord's obligations

10.1 The obligations in clause 5, clause 6, and clause 8 are personal and binding only on Ilminster Town Council of Council Offices, North Street, Ilminster, Somerset TA19 0DG.

10.2 Ilminster Town Council shall be released from all liability in respect of its obligations referred to in clause 10.1 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.

11 Conditions

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

11.1.1 are applicable to the grant of a lease;

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

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

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

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

11.4 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.

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

12 Deducing title

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

12.2 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.

12.3 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.

13 Title guarantee

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

13.2 The implied covenants for title are modified so that:

13.2.1 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 14.1); and

13.2.2 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.

13.3 Condition 6.6.2 does not apply to this agreement.

14 Matters affecting the Property

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

14.1.1 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.

14.1.2 all matters contained or referred to in the Lease;

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

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

14.1.5 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;

14.1.6 public requirements;

14.1.7 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;

14.2 The Tenant is deemed to have full knowledge of the matters referred to in clause 14.1 and shall not raise any enquiry, objection, requisition or claim in respect of any of them.

14.3 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.

15 **[Guarantor]**

15.1 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:

15.1.1 the Guarantor shall execute the counterpart Lease and counterpart Licence to Carry out Works within [NUMBER] working days after the engrossments have been submitted to the Tenant's Conveyancer;

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

15.1.3 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

15.1.4 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 [NUMBER] [weeks OR 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.

15.2 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.

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

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

15.3.2 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;

15.3.3 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;

Comment [BKS]: At present there is no guarantor. You are recommended to require that the tenant supplies guarantors (at least two) who can step into the shoes of the Tenant in the event that the Tenant becomes insolvent and/or is unable to complete on the lease.

- 15.3.4 [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;]
- 15.3.5 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;
- 15.3.6 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
- 15.3.7 any other act or omission except an express written release by deed of the Guarantor by the Landlord.

16 Termination on Tenant's insolvency and material non-compliance by the Tenant

16.1 An Event of Default is any of the following:

- 16.1.1 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;
- 16.1.2 the making of an application for an administration order or the making of an administration order in relation to the Tenant;
- 16.1.3 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;
- 16.1.4 the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant;
- 16.1.5 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;
- 16.1.6 the making of a petition for a winding-up order or a winding-up order in respect of the Tenant;
- 16.1.7 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
- 16.1.8 the Tenant otherwise ceasing to exist.

16.2 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.

16.3 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:

- 16.3.1 not capable of being remedied; or

16.3.2 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.

17 Consequences of termination

17.1 If the Landlord gives notice to terminate under clause 16.2 or clause 16.3:

17.1.1 subject to clause 17.1.2, 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 17.1.2;

17.1.2 clause 15.2 and clause 17 shall continue in force notwithstanding the termination of this agreement under clause 17.1.1;

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

17.1.4 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.

18 Completion of grant of the lease

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

18.2 On completion, the Tenant shall pay to the Landlord TBC.

18.3 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.

18.4 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"

18.5 Condition 9.3 does not apply to this agreement.

19 VAT

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

19.2 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.

19.3 Condition 1.4 does not apply to this agreement.

20 Entire agreement

20.1 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.

20.2 The Tenant acknowledges that:

20.2.1 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.

20.2.2 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;

20.2.3 nothing in this clause 20.2 shall limit or exclude any liability for fraud.

20.3 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."

21 Joint and several liability

21.1 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.

21.2 Condition 1.2 does not apply to this agreement.

22 Notices

22.1 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:

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

22.1.2 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.

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

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

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

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

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

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

22.5 Condition 1.3 does not apply to this agreement.

23 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.

24 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.

25 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) _____
Ilminster Town Council)

Signed by)
for and on behalf of) _____
Ilminster sports Club Limited)

Appendix 1

Approved Documents in agreed form

Appendix 2

Copy Building Contract OR Agreed form of Building Contract

Appendix 3

List of parties required to give Collateral Warranties

Appendix 4

Agreed forms of Collateral Warranties

Appendix 5
Agreed form of Lease

Appendix 6

Award Agreement dated 13 April 2015

Appendix 7

Certified copy of Landlord's warning notice served on Tenant

Appendix 8

Certified copy of Tenant's [statutory] declaration

Lease

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

Dated 2015

- (1) Ilminster Town Council
- (2) Ilminster Sports Club Limited

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PRESCRIBED CLAUSES

LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

ST63038

LR2.2 Other title numbers

None

LR3. Parties to this lease

Landlord

ILMINSTER TOWN COUNCIL

Council Offices, North Street, Ilminster, Somerset TA19 0DG

Tenant

IIMINISTER SPORTS CLUB LIMITED

Archie Gooch Centre, Canal Way, Ilminster, Somerset, TA19 0DG

Company registration number 9473005

Other parties

None

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

See the definition of "Property" in *clause 1.1* of this lease.

LR5. Prescribed statements etc.

LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.

None

LR5.2 This lease is made under, or by reference to, provisions of:

None.

LR6. Term for which the Property is leased

The term as specified in this lease at clause 1.1 in the definition of "Contractual Term".

LR7. Premium

None.

LR8. Prohibitions or restrictions on disposing of this lease

This lease contains a provision that prohibits or restricts dispositions.

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None.

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None.

LR9.3 Landlord's contractual rights to acquire this lease

None.

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

None.

LR11. Easements

LR11.1 Easements granted by this lease for the benefit of the Property

The easements as specified in clause 3.2 of this lease.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements as specified in clause 4 of this lease.

LR12. Estate rentcharge burdening the Property

None.

LR13. Application for standard form of restriction

The Parties to this lease apply to enter the following standard form of restriction against the title of the Property.

None.

LR14. Declaration of trust where there is more than one person comprising the Tenant

None.

This Lease is made on

2015

Between:

- (1) **ILMINISTER TOWN COUNCIL** of Council Offices, North Street, Ilminster, Somerset, TA19 0DG (the "Landlord"); and
- (2) **ILMINISTER 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").

It is agreed as follows:

1 Interpretation

1.1 The definitions and rules of interpretation set out in this clause apply to this lease.

- "Act of Insolvency"**
- (a) 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; or
 - (b) the making of an application for an administration order or the making of an administration order in relation to the Tenant; or
 - (c) 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; or
 - (d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant; or
 - (e) 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; or
 - (f) the making of a petition for a winding-up order or a winding-up order in respect of the Tenant; or

- (g) 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
- (h) the Tenant otherwise ceasing to exist; or
- (i) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Tenant.

the paragraphs above shall apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships Order 1994 (SI 1994/2421) (as amended), and a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) (as amended);

act of insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a tenant incorporated or domiciled in such relevant jurisdiction;

"Annual Rent"	rent at an initial rate of £TBC per annum and then as revised pursuant to this lease;
"Base RPI Month"	TBC
"Base Rent"	TBC
"Contractual Term"	a term of twenty five years beginning on, and including 2015 and ending on, and including 2040;
"Default Interest Rate"	four percentage points above the Interest Rate;
"Interest Rate"	interest at the base rate from time to time of HSBC Bank plc, or if that base rate stops being used or published then at a comparable commercial rate reasonably determined by the Landlord;
"Landlord's Neighbouring Property"	each and every part of the adjoining and neighbouring property in which the Landlord has an interest known as Britten's Field, Ilminster registered at HM Land Registry with title number ST63038 shown edged blue on the attached plan marked the "Plan";
"LTA 1954"	Landlord and Tenant Act 1954;

"Permitted Use"	sporting, youth and community activities for the benefit of the community, in accordance with the Tenant's Objectives;
"Property"	that part of the land and sports fields at Britten's Field, Canal Way, Ilminster registered at HM Land Registry with title number ST63038 and shown edged red on the Plan;
"Plan"	means the plan attached to this lease and marked "Plan"
"RPI"	the Retail Prices Index or any official index replacing it.
"Rent Commencement Date"	TBC
"Rent Payment Dates"	2 March, 24 June, 29 September and 25 December;
"Reservations"	all of the rights excepted, reserved and granted to the Landlord by this lease;
"Review Date"	2020 and every fifth anniversary of that date;
"Service Media"	all media for the supply or removal of heat, electricity, gas, water, sewage, air conditioning, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media;
"Third Party Rights"	all rights, covenants and restrictions affecting the Property including the matters referred to at the date of this lease in the property register and entries 2 and 3 inclusive of the charges register of 1, 2 and 3 of the title number ST63038;
"Tenant's Objectives"	means the objectives set out at paragraph 4 of the Tenant's Articles of Association dated 5 March 2015 including operating a bar but not (for the avoidance of doubt) any subsequent amendments of such Articles of Association.
"VAT"	value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax.
1.2	A reference to this "lease", except a reference to the date of this lease or to the grant of the lease, is a reference to this deed and any deed, licence, consent, approval or other instrument supplemental to it.
1.3	A reference to the "Landlord" includes a reference to the person entitled to the immediate reversion to this lease. A reference to the "Tenant" includes a reference to its successors in title and assigns.

- 1.4 In relation to any payment, a reference to a "fair proportion" is to a fair proportion of the total amount payable, determined conclusively (except as to questions of law) by the Landlord.
- 1.5 The expressions "landlord covenant" and "tenant covenant" each has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.6 Unless the context otherwise requires, a reference to the "Property" is to the whole and any part of it.
- 1.7 A reference to the "term" is to the Contractual Term.
- 1.8 A reference to the "end of the term" is to the end of the term however it ends.
- 1.9 References to the "consent" of the Landlord are to the consent of the Landlord given in accordance with clause 32.5 and references to the "approval" of the Landlord are to the approval of the Landlord given in accordance with clause 32.6.
- 1.10 A "working day" is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.11 Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.
- 1.12 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.
- 1.13 Any obligation in this lease on the Tenant not to do something includes an obligation not to agree to or suffer that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.14 Unless the context otherwise requires, where the words "include(s)" or "including" are used in this lease, they are deemed to have the words "without limitation" following them.
- 1.15 A "person" includes a corporate or unincorporated body.
- 1.16 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this lease and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.
- 1.17 Clause, Schedule and paragraph headings do not affect the interpretation of this lease.

2 Grant

- 2.1** The Landlord with full title guarantee lets the Property to the Tenant for the Contractual Term.
- 2.2** The grant is made together with the ancillary rights set out in clause 3, excepting and reserving to the Landlord the rights set out in clause 4, and subject to the Third Party Rights.
- 2.3** The grant is made with the Tenant paying the following as rent to the Landlord:
 - 2.3.1** the Annual Rent and all VAT in respect of it; and
 - 2.3.2** all other sums due under this lease.

3 Ancillary rights

- 3.1** Except as mentioned in clause 3.2, neither the grant of this lease nor anything in it confers any right over neighbouring property nor is to be taken to show that the Tenant may have any right over neighbouring property, and section 62 of the LPA 1925 does not apply to this lease.
- 3.2** [TBC IF ANY].

4 Rights excepted and reserved

- 4.1** The following rights are excepted and reserved from this lease to the Landlord for the benefit of the Landlord's Neighbouring Property and to the extent possible for the benefit of any neighbouring or adjoining property in which the Landlord acquires an interest during the term:
 - 4.1.1** the right for the Landlord, the general public and (without prejudice to the generality of the foregoing) all other persons now or hereafter authorised by the Landlord to use the Property and any facilities or premises now or during the Contractual Term thereon provided that the Landlord shall not be entitled to authorise any other person or persons during the Contractual Term to use the football pitch on the Property.
 - 4.1.2** rights of light, air, support and protection to the extent those rights are capable of being enjoyed at any time during the term;
 - 4.1.3** the right to use and to connect into Service Media at the Property which are in existence at the date of this lease or which are installed or constructed during the period of fifteen years from the commencement of the Contractual Term;
 - 4.1.4** at any time during the term, the full and free right to develop the Landlord's Neighbouring Property and any neighbouring or adjoining property in which the Landlord acquires an interest during the term as the Landlord may think fit;

- 4.1.5 the right to build on or into any boundary of the Property in connection with any of the Reservations subject to the Landlord having first notified the Tenant of its intentions and given the Tenant reasonable opportunity to make representations to the Landlord; and
- 4.1.6 the right to re-route any Service Media at or serving the Property or re-route any means of access to or egress from the Property

notwithstanding that the exercise of any of the Reservations or the works carried out pursuant to them result in a reduction in the flow of light or air to the Property or loss of amenity for the Property.

4.2 The Landlord reserves the right to enter the Property:

- 4.2.1 to repair, maintain or replace any Service Media or structure relating to any of the Reservations; and
- 4.2.2 for any other purpose mentioned in or connected with:
 - (a) this lease;
 - (b) the Reservations; and
 - (c) the Landlord's interest in the Property.

4.3 The Reservations may be exercised by the Landlord and by anyone else who is or becomes entitled to exercise them, and by anyone authorised by the Landlord.

4.4 No party exercising any of the Reservations, nor its workers, contractors, agents and professional advisors, shall be liable to the Tenant or to any undertenant or other occupier of or person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of its exercising any of those Reservations except for:

- 4.4.1 physical damage to the Property; or
- 4.4.2 any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents the Landlord from excluding liability.

5 Third party rights

- 5.1 The Tenant shall comply with all obligations on the Landlord relating to the Third Party Rights (insofar as those obligations relate to the Property) and shall not do anything (even if otherwise permitted by this lease) that may interfere with any Third Party Right.
- 5.2 The Tenant shall allow the Landlord and any other person authorised by the terms of the Third Party Right to enter the Property in accordance with its terms.

6 The Annual Rent

- 6.1** The Tenant shall pay the Annual Rent and any VAT in respect of it by four equal instalments in advance on or before the Rent Payment Dates. The payments shall be made by banker's standing order or by any other method that the Landlord requires at any time by giving notice to the Tenant.
- 6.2** The first instalment of the Annual Rent and any VAT in respect of it shall be made on the date of this lease and shall be the proportion, calculated on a daily basis, in respect of the period from the Rent Commencement Date until the day before the next Rent Payment Date.

7 Review of the Annual Rent

- 7.1** In this clause the "Surveyor" is the District Valuer.
- 7.2** The amount of Annual Rent shall be reviewed on each Review Date to equal:
- 7.2.1** the Annual Rent payable immediately before the relevant Review Date (or which would then be payable but for any abatement or suspension of the Annual Rent or restriction on the right to collect it) or, if greater;
- 7.2.2** the indexed rent determined pursuant to this clause.
- 7.3** The indexed rent shall be determined at the relevant Review Date by multiplying the Base Rent by the All Items index value of the RPI for the month two months before the month in which the relevant Review Date falls, then dividing the product by the All Items index value of the RPI for the Base RPI Month.
- 7.4** The Landlord shall calculate the indexed rent as soon as reasonably practicable and shall give the Tenant written notice of the indexed rent as soon as it has been calculated.
- 7.5** If the revised Annual Rent has not been calculated by the Landlord and notified to the Tenant on or before the relevant Review Date, the Annual Rent payable from that Review Date shall continue at the rate payable immediately before that Review Date. No later than five working days after the revised Annual Rent is notified by the Landlord to the Tenant, the Tenant shall pay:
- 7.5.1** the shortfall (if any) between the amount that it has paid for the period from the Review Date until the Rent Payment Date following the date of notification of the revised Annual Rent and the amount that would have been payable had the revised Annual Rent been notified on or before that Review Date; and
- 7.5.2** interest at the Interest Rate on that shortfall calculated on a daily basis by reference to the Rent Payment Dates on which parts of the shortfall would have been payable if the revised Annual Rent had been notified on or before that Review Date and the date payment is received by the Landlord.

- 7.6 Time shall not be of the essence for the purposes of this clause.
- 7.7 Subject to clause 7.8, if there is any change to the methods used to compile the RPI, including any change to the items from which the All Items index of the RPI is compiled, or if the reference base used to compile the RPI changes, the calculation of the indexed rent shall be made taking into account the effect of any such change.
- 7.8 If either the Landlord or the Tenant reasonably believes that any change referred to in clause 7.7 would fundamentally alter the calculation of the indexed rent in accordance with this clause 7 and has given notice to the other party of this belief, or if it becomes impossible or impracticable to calculate the Indexed rent in accordance with this clause 7, then the Landlord and the Tenant shall endeavour within a reasonable time to agree an alternative mechanism for setting the Annual Rent, which may (where reasonable) include, or consist of, substituting an alternative index for the RPI. In default of such agreement, an alternative mechanism shall be determined by the Surveyor.
- 7.9 If any question or dispute arises between the parties as to the amount of the Annual Rent payable or as to the interpretation, application or effect of any part of this clause 7, or if the Landlord and the Tenant fail to reach agreement under clause 7.8, the question, dispute or disagreement is to be determined by the Surveyor. The Surveyor shall have full power to determine the question, dispute or disagreement. When determining such a question, dispute or disagreement, the Surveyor may, if he considers it appropriate, specify that an alternative mechanism for setting the Annual Rent should apply to this lease, and this includes (but is not limited to) substituting an alternative index for the RPI.
- 7.10 The Surveyor shall act as an expert and not as an arbitrator. The Surveyor's decision shall be given in writing, and the Surveyor shall provide reasons for any determination. The Surveyor's written decision on the matters referred to him shall be final and binding in the absence of manifest error or fraud.
- 7.11 The Surveyor shall give the Landlord and the Tenant an opportunity to make written representations to the Surveyor and to make written counter-representations commenting on the representations of the other party to the Surveyor. The parties will provide (or procure that others provide) the Surveyor with such assistance and documents as the Surveyor reasonably requires for the purpose of reaching a decision.
- 7.12 If the Surveyor dies, or becomes unwilling or incapable of acting, or unreasonably delays in making any determination, then either the Landlord or the Tenant may apply to the President to discharge the Surveyor and clause 7.10 shall then apply in relation to the appointment of a replacement.

The fees and expenses of the Surveyor and the cost of the Surveyor's appointment and any counsel's fees, or other fees, reasonably incurred by the Surveyor shall be payable by the Landlord and the Tenant in the proportions that the Surveyor directs (or if the Surveyor makes no direction, then equally). If the Tenant does not pay its

part of the Surveyor's fees and expenses within ten working days after demand by the Surveyor, the Landlord may pay that part and the amount it pays shall be a debt of the Tenant due and payable on demand to the Landlord. The Landlord and the Tenant shall otherwise each bear their own costs in connection with the rent review.

8 Insurance

- 8.1** The Landlord shall keep such public liability insurance as it from time to time deems appropriate in respect of the Property.
- 8.2** The Tenant shall be responsible for ensuring that there are in place any and all such insurances as may be required by the governing body of the relevant sporting event or other activity taking place on the Property at any given time whenever such events or activities are organised by the Tenant. The Tenant shall provide evidence that such insurance is on place with the Landlord on request. .
- 8.3** If any event (which is not a usual event under the Permitted Use) is held on the Property, then the organiser of that event shall put in place sufficient event insurance and shall provide evidence that such insurance is paid and in place to the Landlord on request.

9 Utilities

- 9.1** The Tenant shall pay all costs in connection with the supply and removal of any electricity, gas, telecommunications, data and other services and utilities to or from the Property.
- 9.2** If any of those costs are payable in relation to the Property together with other property, the Tenant shall pay a fair proportion of all those costs.
- 9.3** The Tenant shall comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities.

10 VAT

- 10.1** All sums payable by the Tenant are exclusive of any VAT that may be chargeable. The Tenant shall pay VAT in respect of all taxable supplies made to it in connection with this lease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.
- 10.2** Every obligation on the Tenant, under or in connection with this lease, to pay the Landlord or any other person any sum by way of a refund or indemnity, shall include an obligation to pay an amount equal to any VAT incurred on that sum by the Landlord or other person, except to the extent that the Landlord or other person obtains credit for such VAT under the Value Added Tax Act 1994.

11 Costs

11.1 The Tenant shall pay the costs and expenses of the Landlord including any solicitors' or other professionals' costs and expenses incurred (both during and after the end of the term) in connection with or in contemplation of any of the following:

- 11.1.1** the enforcement of the tenant covenants of this lease;
- 11.1.2** serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;
- 11.1.3** serving any notice in connection with this lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;
- 11.1.4** the preparation and service of a schedule of dilapidations in connection with this lease; or
- 11.1.5** any consent or approval applied for under this lease, whether or not it is granted.

11.2 Where the Tenant is obliged to pay or indemnify the Landlord against any solicitors' or other professionals' costs and expenses (whether under this or any other clause of this lease) that obligation extends to those costs and expenses assessed on a full Indemnity basis.

12 Compensation on vacating

Any right of the Tenant or anyone deriving title under the Tenant to claim compensation from the Landlord on leaving the Property under the LTA 1954 is excluded, except to the extent that the legislation prevents that right being excluded.

13 No deduction, counterclaim or set-off

The Annual Rent and all other money due under this lease are to be paid by the Tenant without deduction, counterclaim or set-off.

14 Registration of this lease

Promptly following the grant of this lease, the Tenant shall apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. Within one month after completion of the registration, the Tenant shall send the Landlord official copies of its title.

15 Prohibition of dealings

The Tenant shall not assign, underlet, charge, part with or share possession or share occupation of this lease or the Property or hold the lease on trust for any person (except pending registration of a dealing permitted by this lease at HM Land Registry or by reason

only of joint legal ownership). For the avoidance of doubt, the exercise of any of the rights reserved at clause 4 of this lease shall not be a breach of this covenant.

16 Closure of the registered title of this lease

Within one month after the end of the term (and notwithstanding that the term has ended), the Tenant shall make an application to close the registered title of this lease and shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly; the Tenant shall keep the Landlord informed of the progress and completion of its application.

17 Repairs and maintenance

17.1 The Tenant shall keep the Property clean and tidy and in good repair and condition.

17.2 The Tenant shall ensure removal of any animal faeces immediately prior to the commencement of and after the end of all events and sports fixtures organised by the Tenant.

17.3 The obligations at clauses 17.1 and 17.2 do not apply to the footpath now or in the future constructed upon the Property, which shall be maintained by the Landlord.

17.4 The Landlord may mow the grass and collect litter at the Property as often as the Landlord deems reasonably necessary.

17.5 The Tenant shall ensure that all machinery, equipment and the like (including items such as grass rollers) are put away in designated secure storage areas when not in use.

17.6 The Tenant shall not deposit any rubbish (including but not limited to grass clippings and other vegetation) on the Property.

18 Signs

18.1 In this clause "Signs" include signs, fascia, placards, boards, posters and advertisements.

18.2 The Tenant shall not attach any Signs to any walls, trees or fences at the Property without the consent of the Landlord, such consent not to be unreasonably withheld.

18.3 Before the end of the term, the Tenant shall remove any Signs placed by it at the Property and shall make good any damage caused to the Property by that removal.

18.4 The Tenant shall allow the Landlord to fix to and keep at the Property any sale or letting board as the Landlord reasonably requires.

18.5 The Landlord shall allow the Tenant to display sponsor signs on the respect line on home match days only. The Tenant shall remove such sponsor signs within two working days of the match end date.

19 Returning the property to the landlord

- 19.1 At the end of the term the Tenant shall return the Property to the Landlord in the repair and condition required by this lease.
- 19.2 If the Landlord gives the Tenant notice no later than three months before the end of the term, the Tenant shall remove items it has fixed to the Property, remove any alterations it has made to the Property and make good any damage caused to the Property by that removal.
- 19.3 At the end of the term, the Tenant shall remove from the Property all chattels belonging to or used by it.
- 19.4 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels or items it has fixed to the Property and which have been left by the Tenant on the Property for more than ten working days after the end of the term. The Landlord shall not be liable to the Tenant by reason of that storage or disposal. The Tenant shall indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal.

20 Use

- 20.1 The Tenant shall not use the Property for any purpose other than the Permitted Use.
- 20.2 The Tenant shall not use the Property for any illegal purpose nor for any purpose or in a manner that would cause loss, damage, injury, nuisance or inconvenience to the Landlord, its other tenants or any other owner or occupier of neighbouring property.
- 20.3 Any other use of the Property is subject to the prior written consent of the Landlord.

21 Other tenant obligations

- 21.1 The Tenant shall take part in annual inspection and review meetings with the Landlord and other relevant bodies, individuals and organisations.
- 21.2 The Landlord shall not be responsible for marking out pitches and other markings on the Property nor the erection of goalposts nor the respect barrier when necessary for the playing of sports.
- 21.3 The Tenant shall ensure that any litter (to include, but not be limited to, drinks cans or bottles, cigarette packets, sports tape or similar items and animal faeces) that are left on the Property by the Tenant or its visitors, invitees or patrons are collected and safely disposed of promptly, immediately prior to the commencement of and after the end of all Tenant-organised events and sports fixtures and in any event by the end of each day.

22 Compliance with laws

- 22.1 The Tenant shall comply with all laws relating to:
- 22.1.1 the Property and the occupation and use of the Property by the Tenant;

- 22.1.2 the use of all Service Media and machinery and equipment at or serving the Property;
- 22.1.3 any works carried out at the Property; and
- 22.1.4 all materials kept at or disposed from the Property.
- 22.2 Without prejudice to any obligation on the Tenant to obtain any consent or approval under this lease, the Tenant shall carry out all works that are required under any law to be carried out at the Property whether by the owner or the occupier.
- 22.3 Within five working days after receipt of any notice or other communication affecting the Property (and whether or not served pursuant to any law) the Tenant shall:
 - 22.3.1 send a copy of the relevant document to the Landlord; and
 - 22.3.2 take all steps necessary to comply with the notice or other communication and take any other action in connection with it as the Landlord may require.
- 22.4 The Tenant shall not apply for any planning permission for the Property without the Landlord's consent.
- 22.5 The Tenant shall, when the same are required, apply for or procure a public performance licence or any other licence that may be required from time to time, and shall provide a copy of such licences to the Landlord during the Contractual Term.
- 22.6 As soon as the Tenant becomes aware of any defect in the Property, it shall give the Landlord notice of it. The Tenant shall Indemnify the Landlord against any liability under the Defective Premises Act 1972 in relation to the Property by reason of any failure of the Tenant to comply with any of the tenant covenants in this lease.
- 22.7 The Tenant shall observe and perform any such community facilities management and rental policy as issued by the Landlord from time to time to the extent that it does not derogate from the grant hereby entitled.

23 Encroachments, obstructions and acquisition of rights

- 23.1 The Tenant shall not grant any right or licence over the Property to a third party.
- 23.2 If a third party makes or attempts to make any encroachment over the Property or takes any action by which a right may be acquired over the Property, the Tenant shall:
 - 23.2.1 immediately give notice to the Landlord; and
 - 23.2.2 take all steps (including any proceedings) the Landlord reasonably requires (at the landlord's sole cost) to prevent or license the continuation of that encroachment or action.
- 23.3 The Tenant shall not obstruct the flow of light or air to the Property nor obstruct any means of access to the Property.

- 23.4 The Tenant shall not make any acknowledgement that the flow of light or air to the Property or that the means of access to the Property is enjoyed with the consent of any third party.
- 23.5 If any person takes or threatens to take any action to obstruct the flow of light or air to the Property or obstruct the means of access to the Property, the Tenant shall:
- 23.5.1 immediately notify the Landlord; and
 - 23.5.2 take all steps (including proceedings) the Landlord reasonably requires to prevent or secure the removal of the obstruction.

24 Indemnity

The Tenant shall keep the Landlord indemnified against all expenses, costs, claims, damage and loss (including any diminution in the value of the Landlord's interest in the Property and loss of amenity of the Property) arising from any breach of any tenant covenants in this lease, or any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Property with the actual or implied authority of any of them.

25 Re-entry and forfeiture

- 25.1 The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:
- 25.1.1 any rent is unpaid 21 days after becoming payable whether it has been formally demanded or not;
 - 25.1.2 any breach of any condition of, or tenant covenant, in this lease;
 - 25.1.3 an Act of Insolvency.
- 25.2 If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this lease shall immediately end, but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant.

26 Liability

- 26.1 The obligations of the Tenant arising by virtue of this lease are owed to the Landlord and the obligations of the Landlord are owed to the Tenant.
- 26.2 The Landlord shall not be liable to the Tenant for any failure of the Landlord to perform any landlord covenant in this lease.

27 Entire agreement

- 27.1 This lease and any documents annexed to it constitute the whole agreement between the parties and supersede all previous discussions, correspondence, negotiations,

arrangements, understandings and agreements between them relating to their]subject matter.

- 27.2 Each party acknowledges that in entering into this lease and any documents annexed to it it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) before the date of this lease.
- 27.3 Nothing in this lease constitutes or shall constitute a representation or warranty that the Property may lawfully be used for any purpose allowed by this lease.
- 27.4 Nothing in this clause shall limit or exclude any liability for fraud.

28 Notices, consents and approvals

- 28.1 A notice given under or in connection with this lease shall be:
 - 28.1.1 in writing unless this lease expressly states otherwise and for the purposes of this clause an e-mail is not in writing;
 - 28.1.2 given by hand or by pre-paid first-class post or other next working day delivery service at the party's registered office address (if the party is a company) or (in any other case) at the party's principal place of business.
- 28.2 If a notice is given in accordance with clause 27.1, it shall be deemed to have been received:
 - 28.2.1 if delivered by hand, at the time the notice is left at the proper address; or
 - 28.2.2 if sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting.
- 28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 28.4 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this lease.
- 28.5 Where the consent of the Landlord is required under this lease, a consent shall only be valid if it is given by deed, unless:
 - 28.5.1 it is given in writing and signed by a person duly authorised on behalf of the Landlord; and
 - 28.5.2 it expressly states that the Landlord waives the requirement for a deed in that particular case. If a waiver is given, it shall not affect the requirement for a deed for any other consent.
- 28.6 Where the approval of the Landlord is required under this lease, an approval shall only be valid if it is in writing and signed by or on behalf of the Landlord, unless:

28.6.1 the approval is being given in a case of emergency; or

28.6.2 this lease expressly states that the approval need not be in writing.

28.7 If the Landlord gives a consent or approval under this lease, the giving of that consent or approval shall not imply that any consent or approval required from a third party has been obtained, nor shall it obviate the need to obtain any consent or approval from a third party.

29 Governing law and jurisdiction

29.1 This lease 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.

29.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

30 Exclusion of sections 24-28 of the LTA 1954

30.1 The parties confirm that:

30.1.1 the Landlord served a notice on the Tenant, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this lease, before this lease was entered into a certified copy of which notice is annexed to this lease;

30.1.2 [] who was duly authorised by the Tenant to do so made a statutory declaration dated [] in accordance with the requirements of section 38A(3)(b) of the LTA 1954 a certified copy of which statutory declaration is annexed to this lease; and

30.1.3 there is no agreement for lease to which this lease gives effect.

30.2 The parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by this lease.

31 Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this lease shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

32 Landlord and Tenant (Covenants) Act 1995

This lease creates a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995.

This lease has been executed and delivered as a Deed by the parties on the date first above written

**EXECUTED AS A DEED
by ILLMINISTER TOWN
COUNCIL pursuant to a
resolution of the Council
by affixing its common seal
in the presence of two
members of the Council**

Council Member

Council Member

**EXECUTED AS A DEED
by ILLMINISTER SPORTS
CLUB LIMITED acting by
a director and its company
secretary/two directors**

Director

Director/Company Secretary

