

DATED 7 May 2014

**COUNTERPART LEASE**

relating to

HAVANT LEISURE CENTRE

CIVIC CENTRE ROAD

HAVANT

PO9 2AY

Between

(1) HAVANT BOROUGH COUNCIL

And

(2) BOROUGH OF HAVANT SPORT AND LEISURE TRUST

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**PRESCRIBED CLAUSES**

**LR1. Date of lease**

7 May

2014

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s)**

HP20370

**LR2.2 Other title numbers**

NONE

**LR3. Parties to this lease**

**Landlord**

HAVANT BOROUGH COUNCIL

PUBLIC SERVICE PLAZA CIVIC CENTRE ROAD HAVANT HAMPSHIRE PO9 2AX

**Tenant**

BOROUGH OF HAVANT SPORT AND LEISURE TRUST

HAVANT LEISURE CENTRE CIVIC CENTRE ROAD HAVANT HAMPSHIRE PO9 2AY

COMPANY NUMBER: 3319069

Charity Registration Number 1060896

**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.**

See Clause 43 of this Lease

**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 2.2 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] [against title number]

None

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

The Tenant is more than one person. They are to hold the Property on trust

[COMPLETE AS NECESSARY]

This lease is dated

7 May

2014

## **PARTIES**

- (1) HAVANT BOROUGH COUNCIL of Public Service Plaza, Civic Centre Road, Havant, Hampshire, P09 2AX (Landlord)
- (2) BOROUGH OF HAVANT SPORT AND LEISURE TRUST incorporated and registered in England and Wales with company number 3319069 whose registered office is at Havant Leisure Centre, Civic Centre Road, Havant, Hampshire, P09 2AY (Tenant)

## **AGREED TERMS**

### **1. INTERPRETATION**

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

**The Amusement Machines:** means any amusement machine including, but not limited to, mechanical, electrical or electronic amusement with prizes machines, amusement without prizes machines, skill with prizes machines or gaming machines, or devices for sound and/or visual reproduction, or projection and other machines of a similar nature and pool tables, snooker tables, billiard tables and equipment for use with similar types of games, except where for purely domestic use.

**Annual Rent:** rent at a rate of one peppercorn if demanded.

**Contractual Term:** a term of years beginning on, and including the date of this lease and ending on, and including 30 September 2042.

**Conversion :** means

- (a) conversion of the former indoor bowls hall to a gym and ancillary services;
- (b) construction of a new entrance lobby;
- (c) insertion of 6 external windows;
- (d) reconfiguration of the reception, changing rooms, corridor, cellar, kitchen, bar and lounge; and
- (e) removal of the wall between the main hall and the lounge
- (f) display of 3No. illuminated fascia signs, 3No. wall mounted fabric signs and 7No. hanging signs
- (g) the removal or relocation re-siting of the existing bus shelter

and all other works as more particularly described in the full planning application received by the Planning Authority on 22 November 2013 numbered APP/13/01148 and APP/13/01149 upon which planning permission has been granted and shown on the plan labelled 'Dr No 27922-SK-14F') and including all ancillary works required.

**Engineering Insurance:** a standard policy providing cover for damage or loss of plant, particularly pressure plant and lifts including provision for statutory inspections and testing of equipment under cover that will be extended to cover the Conversion and all future works to the Property undertaken by the Tenant.

**Insured Risks:** means fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion including temporarily making the property safe and protecting any adjoining structures, debris removal, demolition and site clearance, obtaining planning and all other statutory and other consents, architects, surveyors and other fees incurred by the Landlord in relation to the reinstatement and complying with the requirements of any statute or of any local public regulatory or other authority (together with any VAT that may be payable on or in respect of any of these costs and fees) and any other risks against which the Landlord's Head of Resources decides to insure from time to time but excluding ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component hereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds and in respect of movable property theft.

**Interest Rate:** interest at four percentage points above the base lending rate from time to time of National Westminster Bank Plc, or if that base lending rate stops being used or published then at a comparable commercial rate reasonably determined by the Landlord.

**Licence:** means the premises licence or certificates, relating to the sale of intoxicating liquor for consumption on the Property.

**Maintenance Schedule:** the maintenance, repair and replacement obligations in respect of the Property of the Landlord and the Tenant as set out in Schedule One of this lease.

**Permitted Use:** the operation of a Sport and Leisure Centre and for any purposes incidental to or in furtherance of the due operation of a Sport and Leisure Centre including the use as a children's play facility, physiotherapy consultancy and car parking but excluding retail shopping of any kind unless the Landlord has first given its prior written consent to such use.

**Property:** the land and building at Havant Leisure Centre Civic Centre Road Havant being part of the land registered at HM Land Registry with freehold title absolute under Title Number HP20370 shown edged red on the attached plan.

**Rent Commencement Date:** 7 May 2014

**Rent Payment Dates:** 1st January

**Service Media:** the lifts and lift machinery and equipment and all media for the supply or removal of heat, electricity, gas, water, sewage, air conditioning energy, 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 and charges registers of Title Number HP20370.



**VAT:** value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax.

**1954 Act:** Landlord and Tenant Act 1954.

- 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 and any agreed or statutory continuation of this lease.
- 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 38.4 and references to the **approval** of the Landlord are to the approval of the Landlord given in accordance with clause 38.5.
- 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.

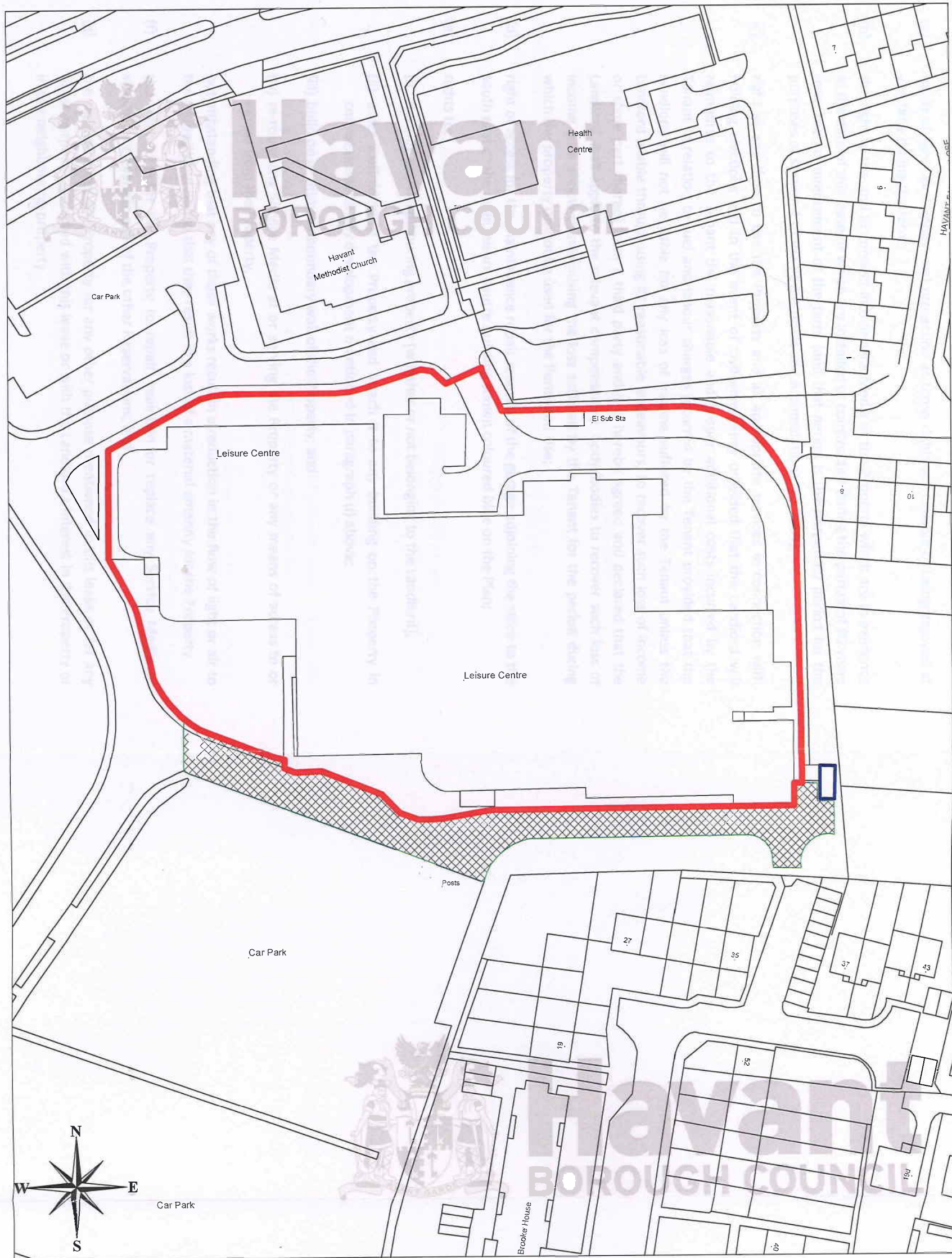
- 1.13 Any obligation in this lease on the Tenant not to do something includes an obligation not to agree to or suffer that thing to be done and an obligation to use reasonable endeavours to prevent that thing being done by another person.
- 1.14 Unless the context otherwise requires, where the words **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 References to **writing** or **written** do not include faxes or email.
- 1.17 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.
- 1.18 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 with the right for the Tenant and all persons authorised by it (including all persons using the facilities at the Property) at all times to gain both pedestrian and vehicular access to and from the Property over the adjoining roadways in the ownership of the Landlord as at the date of this Lease in order to obtain access to and from the public highway.
- 2.3 The grant is made excepting and reserving to the Landlord the rights set out in clause 4, and subject to the Third Party Rights.
- 2.4 The grant is made with the Tenant paying the Annual Rent to the Landlord.

## **3. ANCILLARY RIGHTS**

Except as referred to in clause 2.2, 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 Law of Property Act 1925 does not apply to this lease.



*Debra A. Crane*

<p>Civic Offices, Civic Centre Road, Havant, Hampshire PO9 2AX t: 023 9247 4174</p>	<p>Title: <b>Havant Leisure Centre, Civ Centre Road, Havant</b></p>	<p>Drawn By: <b>CL</b></p>
	<p>Reproduced from the Ordnance Survey Digital Data with the permission of the Controller of HMSO, Crown Copyright Reserved 2008. Licence No LA100019217</p>	<p>Scale: <b>1:1250</b></p> <p>Drawing No: <b>V/2361</b></p> <p><b>Cleaner, Safer, More Prosperous</b></p>

#### 4. RIGHTS EXCEPTED AND RESERVED

4.1 The following rights are excepted and reserved from this lease to the Landlord (the **Reservations**):

- (a) rights of light, air, support and protection as those rights are capable of being enjoyed at any time during the term;
- (b) 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 80 years from the commencement of the term (and that period is the perpetuity period for the purposes of section 1 of the Perpetuities and Accumulations Act 1964);
- (c) right at any time to use the Property and all appropriate services in connection with holding elections and in the event of civil emergency provided that the Landlord will reimburse to the Tenant the reasonable and proper additional costs incurred by the Tenant in relation to fuel and labour charges incurred by the Tenant provided that the Landlord will not be liable for any loss of income suffered by the Tenant unless the Landlord is able through using its reasonable endeavours, to recover such loss of income or some part thereof from a third party and it is hereby agreed and declared that the Landlord shall apply to the relevant compensatory body/bodies to recover such loss of income with a view to minimising the loss suffered by the Tenant for the period during which the property cannot be used for the Permitted Use;
- (d) right of access for the maintenance repair renewal of the garage adjoining the store to the south east of the main leisure centre building shown coloured blue on the Plan;
- (e) rights to:
  - (i) develop any neighbouring property (whether or not belonging to the Landlord);
  - (ii) erect scaffolding at the Property and attach it to any building on the Property in connection with any development mentioned in paragraph (i) above;
  - (iii) build on or into any boundary wall of the Property; and
  - (iv) re-route any Service Media at or serving the Property or any means of access to or egress from the Property,notwithstanding that any of those works result in a reduction in the flow of light or air to the Property but not so that they result in a loss of a material amenity for the Property.
- (f) the right to enter the Property to repair, maintain or replace any Service Media or structure relevant to any of the other Reservations; and
- (g) the right to enter the Property for any other purpose mentioned in this lease or for any other purpose connected with this lease or with the Landlord's interest in the Property or in any neighbouring property.

(h) Subject to clause 22.1.1 the right to retain the litter bins, road name sign, directional sign, lighting columns and bollards in their current position at the Property, unless the Landlord consents to the relocation.

4.2 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 and any damage caused in the exercise of those Reservations shall be made good to the reasonable satisfaction of the Tenant within a reasonable period of time.

4.3 The Tenant shall allow all those entitled to exercise any right to enter the Property, to do so with their workers, contractors, agents and professional advisors, and to enter the Property at any reasonable time (whether or not during usual business hours) and, except in the case of an emergency, after having given reasonable notice (which need not be in writing) to the Tenant.

4.4 Provided that every reasonable effort is taken in the exercise of the Reservations to not interfere with the business of the Tenant then no one 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 rights except for:

(a) physical damage to the Property or;

(b) any loss damage, injury nuisance or inconvenience in relation to which the law prevents the Landlord 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 Rights.

5.2. The Tenant shall allow the Landlord and any other person authorised by the terms of the Third Party Rights to enter the Property in accordance with its terms.

## **6. THE ANNUAL RENT**

The Tenant shall pay the Annual Rent on or before the Rent Payment Dates.

## 7. INSURANCE

- 7.1 Subject to clause 7.2 - 7.4, the Landlord shall keep the Property insured against loss or damage by the Insured Risks for the full reinstatement cost, the Tenant having the opportunity to challenge the amount of the reinstatement cost. The Landlord shall produce to the Tenant on demand but not more than once in any period of 12 months, reasonable evidence of the terms of the policy and of payment of the last premium. The Landlord shall not be obliged to insure any of the Property or any fittings furniture equipment or facilities installed by the Tenant.
- 7.2 The Landlord will insure the Conversion to the extent it forms part of the Property and after it has been completed in the amount the Tenant notifies the Landlord is the full reinstatement cost, the Tenant accepting that it continues to be responsible for insuring from the date of such notification until the Landlord has put the necessary arrangements in place.
- 7.3 Until the Landlord is obliged to insure the Conversion, the Conversion will be at the Tenant's sole risk.
- 7.4 The Landlord's obligation to insure is subject to:
- (a) any exclusions, limitations, excesses and conditions that may be imposed by the insurers or decided upon by the Landlord in its absolute discretion; and
  - (b) insurance being available in the London insurance market on reasonable terms acceptable to the Landlord.
- 7.5 The Tenant shall:
- (a) give the Landlord notice immediately any matter occurs that any insurer or underwriter may treat as material in deciding whether or on what terms to insure or to continue to insure the Property;
  - (b) not do or omit anything as a result of which any policy of insurance of the Property or any neighbouring property may become void or voidable or otherwise prejudiced, or the payment of any policy money may be withheld, nor (unless the Tenant has previously notified the Landlord and has paid any increased or additional premium) anything as a result of which any increased or additional insurance premium may become payable;
  - (c) comply at all times with the requirements and recommendations of the insurers relating to the Property;
  - (d) give the Landlord immediate notice of the occurrence of any damage or loss relating to the Property arising from an Insured Risk or of any other event that might affect any insurance policy relating to the Property;
  - (e) not effect any insurance of the Property at the Property, but if it becomes entitled to the benefit of any insurance proceeds in respect of the Property pay those proceeds or cause them to be paid to the Landlord; and

- (f) pay the Landlord an amount equal to any insurance money that the insurers of the Property refuse to pay by reason of any act or omission of the Tenant, or any undertenant, their workers, contractors or agents or any person at the Property.
- (g) put into place Engineering Insurance in an amount and to the extent the Landlord from time to time reasonably requires, and must make available to the Landlord on reasonable demand a copy of the policy or a summary of its terms and a copy of the current premium receipt. The coverage of this insurance shall be similar to the insurance cover held by the Tenant as at September 2013 if required by the Landlord the Tenant must procure the noting on the policy of the Landlord's interest.

7.6 The Landlord shall, subject to obtaining all necessary planning and other consents, use all insurance money received (other than for loss of rent) to repair the damage for which the money has been received or (as the case may be) in rebuilding the Property. The Landlord shall not be obliged to:

- (a) provide accommodation identical in layout or design so long as accommodation reasonably equivalent to that previously at the Property is provided; or
- (b) repair or rebuild the Property after a notice has been served pursuant to clause 7.7 or clause 7.8.

7.7 If, following damage to or destruction of the Property, the Landlord reasonably considers that it is impossible or impractical to reinstate the Property, the Landlord may terminate this lease by giving notice to the Tenant. On giving notice this lease shall determine but this shall be without prejudice to any right or remedy of the Landlord or the Tenant in respect of any breach by the other party of their covenants of this lease. Any proceeds of the insurance (other than any insurance for plate glass) shall belong to the Landlord.

7.8 Provided that the Tenant has complied with its obligations in this clause, the Tenant may terminate this lease by giving notice to the Landlord if, following damage or destruction by an Insured Risk, the Property has not been reinstated so as to be fit for occupation and use within 2 years after the date of damage or destruction. On giving this notice this lease shall determine but this shall be without prejudice to any right or remedy of the Landlord or the Tenant in respect of any breach by the other party of their covenants of this lease. Any proceeds of the buildings insurance shall belong to the Landlord.

## **8. RATES AND TAXES**

8.1 The Tenant shall pay all present and future rates, taxes and other impositions payable in respect of the Property, its use and any works carried out there, other than:

- (a) any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this lease; or
- (b) any taxes, other than VAT and insurance premium tax, payable by the Landlord by reason of the receipt of any of the rents due under this lease.

8.2 If any rates, taxes or other impositions are payable in respect of the Property together with other property, the Tenant shall pay a fair proportion of the amount payable.

8.3 The Tenant shall not make any proposal to alter the rateable value of the Property or that value as it appears on any draft rating list, without the approval of the Landlord.

## 9. UTILITIES

9.1 The Tenant shall pay all costs in connection with the supply and removal of electricity, gas, water, sewage, 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. COMMON ITEMS

The Tenant shall comply with all reasonable regulations the Landlord may make from time to time in connection with the use of any of those Service Media, structures or other items.

## 11. VAT

11.1 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.

11.2 Every obligation on the Tenant under or in connection with this lease to pay, refund or to indemnify the Landlord or any other person any money or against any liability includes an obligation to pay, refund or indemnify against any VAT, or an amount equal to any VAT, chargeable in respect of it.

## 12. COSTS

12.1 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:

- (a) the enforcement of the tenant covenants of this lease;
- (b) 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;



- (c) serving any notice in connection with this lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;
- (d) the preparation and service of a schedule of dilapidations in connection with this lease within three months of the end of the Term; and
- (e) any consent or approval applied for under this lease, whether or not it is granted (unless the consent or approval is unreasonably withheld by the Landlord in circumstances where the Landlord is not unreasonably to withhold it).

12.2 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.

### **13. 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 Landlord and Tenant Act 1927 or the 1954 Act is excluded, except to the extent that the legislation prevents that right being excluded.

### **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. ASSIGNMENTS**

The Tenant shall not assign the whole or any part of this lease.

### **16. UNDERLETTINGS**

16.1 The Tenant shall not underlet the whole or any part of the Property except in accordance with this clause.

16.2 The Tenant shall subject to the prior written approval (not to be unreasonably withheld or delayed) of the Landlord be permitted to share possession of the Property for the purposes only of trading in support of the Tenant's objects provided that no relationship of landlord and tenant is established.

16.3 The Tenant shall be entitled to let rooms in the Property to affiliated clubs associations or other bodies or individuals using the Property for the Permitted Use provided that no relationship of landlord and tenant is established

## **17. CHARGING**

The Tenant shall not charge the whole or any part of this lease.

## **18. PROHIBITION OF OTHER DEALINGS**

Except as expressly permitted by this lease, 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.

## **19. 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.

## **20. REPAIRS**

20.1 The Tenant is to keep the Property in good repair and condition so far as it is liable in accordance with the provisions set out in Schedule One.

20.2 The Tenant shall not lop, fell or plant trees on the Property without having first obtained the Landlord's prior written consent, such consent not to be unreasonably withheld or delayed.

20.3 The Tenant shall not be liable to repair the Property to the extent that any disrepair has been caused by an Insured Risk, unless and to the extent that:

- (a) the policy of insurance of the Property has been vitiated or an insurance proceeds withheld in consequence of any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any person on the Property with the actual or implied authority of any of them: or
- (b) the insurance cover in relation to that disrepair is excluded, limited, is unavailable or has not been extended as mentioned in clause 7.4.

20.4 The tenant covenants to maintain so far as the Tenant is liable in accordance with the provisions of the Schedule One all components, finishes mechanical and electrical installations and lifts plant furniture fixtures and fittings.

## **21. DECORATION**

- 21.1 The Tenant shall decorate the outside and the inside of the Property as often as is reasonably necessary and also in the last three months before the end of the term (except where the Property is to be demolished as part of a comprehensive scheme of redevelopment of the Property and adjoining land) in accordance with the provisions of the Schedule One.
- 21.2 All decoration shall be carried out in a good and proper manner using good quality materials that are appropriate to the Property and the Permitted Use and shall include all appropriate preparatory work.
- 21.3 All decoration carried out in the last three months of the term shall also be carried out to the reasonable satisfaction of the Landlord and using materials, designs and colours approved by the Landlord.

## **22. ALTERATIONS**

### **22.1 Conversion**

22.1.1 The Landlord consents to the Tenant carrying out the Conversion using a method and materials to a specification of the Tenant's choosing, subject to the Tenant complying with all relevant statutory requirements/regulations including complying with all necessary planning permissions, advertisement consent, building regulation approval and the Construction (Design and Management) Regulations 2007.

22.1.2 The tenant's covenants in this lease will extend to the Conversion and apply to the Property as altered by the Conversion.

22.2 Other than the Conversion, the Tenant shall not make any external or structural alteration or addition to the Property without the Landlord's prior written consent such consent not to be unreasonably withheld or delayed and shall not make any opening in any boundary structure of the Property.

22.3 Subject to clause 22.1, the Tenant shall not install any Service Media on the exterior of the Property nor alter the route of any Service Media at the Property without the consent of the Landlord, such consent not to be unreasonably withheld or delayed.

22.4 Subject to clause 22.1, the Tenant shall not make any internal, non-structural alteration to the Property without the consent of the Landlord, such consent not to be unreasonably withheld or delayed.

## **23. SIGNS**

- 23.1 In this clause **Signs** include signs, fascia, placards, hanging banners and boards (both illuminated and non-illuminated).
- 23.2 The Landlord consents to the Tenant attaching Signs to the Property as part of the Conversion .
- 23.3 The Landlord consents to the Tenant erecting external signs at the Property identifying and promoting the Conversion, the design, size and location of the signs to be agreed between the parties.
- 23.4 The Landlord retrospectively consents to the Tenant erecting Signs at the Property under planning application numbers APP/11/01239, APP/11/01832 and APP/13/00110.
- 23.5 Other than those specified in Clause 23.2 and clause 23.3, the Tenant shall not attach any Signs to the exterior of the Property or display any inside the Property so as to be seen from the outside except Signs of a design, size and number and in a position that are appropriate to the Property and the Permitted Use, without the consent of the Landlord, such consent not to be unreasonably withheld or delayed provided that the Tenant has obtained all necessary planning consents and provided further that if the Landlord (acting reasonably) deems such signs to be inappropriate the Tenant shall remove such signs immediately.
- 23.6 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 if so requested by the Landlord.
- 23.7 The Tenant shall allow the Landlord to fix to and keep at the Property any sale or re-letting board as the Landlord reasonably requires during the last six months of the term.

## **24. RETURNING THE PROPERTY TO THE LANDLORD**

- 24.1 At the end of the term the Tenant shall return the Property to the Landlord in the repair and condition required by this lease.
- 24.2 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 (excluding the Conversion) and make good any damage caused to the Property by that removal.
- 24.3 At the end of the term, the Tenant shall remove from the Property all chattels belonging to or used by it.

24.4 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store, sell 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 where their possessions have been disposed of in the mistaken belief (which shall be presumed unless proven to the contrary) that the possessions belong to the Tenant. The Landlord shall hold the proceeds of sale (after deducting the costs of the sale) to the order of the Tenant. The Tenant shall indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal.

24.5 If the Tenant does not comply with its obligations in this clause, then, without prejudice to any other right or remedy of the Landlord, the Tenant shall pay the Landlord an amount equal to the Annual Rent at the rate reserved immediately before the end of the term for the period that it would reasonably take to put the Property into the condition it would have been in had the Tenant performed its obligations under this clause. The amount shall be a debt due on demand from the Tenant to the Landlord.

## **25. USE**

The Tenant shall:

25.1 not use the Property for any purpose other than the Permitted Use.

25.2 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.

25.3 not overload any structural part of the Property nor any machinery or equipment at the Property nor any Service Media at or serving the Property.

25.4 not without the prior written consent of the Landlord to supply or sell intoxicating liquor otherwise than pursuant to a Licence in the areas that have a licence for that purpose.

25.5 not without the prior written consent of the Landlord to use the Property or allow or permit or cause the Property to be used for the purpose of playing the game of bingo in contravention of the Gaming Act 1968 or the Gambling Act 2005.

25.6 not without the prior written consent of the Landlord (not to be unreasonably withheld or delayed) to allow cause permit or suffer any Amusement Machines to be placed or installed on or in the Property.

25.7 not to permit music or singing to be played or performed within the Property so as to be audible at such a level as to constitute a nuisance outside the Property.

25.8 ensure that all emergency exits from the Property shall be kept free from obstruction at all times and closed at all times other than when their opening is required to permit egress from the Property in an emergency.

25.9 ensure that the Property shall not be open to the public generally after 11.30pm at night except on Fridays and Saturdays when the closing time shall be midnight without the prior written consent of the Landlord PROVIDED that the Property may in any event remain open as aforesaid until 1 o'clock in the morning on not more than five days in any calendar year.

25.10 ensure that before the Property is used for any public entertainment the Tenant obtains all necessary licences under the Licensing Act 2003 and the Tenant will comply with their terms.

## **26. COMPLIANCE WITH LAWS**

26.1 The Tenant shall comply with all laws relating to:

- (a) the Property and the occupation and use of the Property by the Tenant;
- (b) the use of all Service Media and machinery and equipment at or serving the Property;
- (c) any works carried out at the Property; and
- (d) all materials kept at or disposed from the Property.

26.2 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.

26.3 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:

- (a) send a copy of the relevant document to the Landlord; and
- (b) 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 (but in respect of subclauses 1, 2 and 3 of this clause 26 not where any such compliance is the obligation of the Landlord)

26.4 The Tenant shall not apply for planning permission for the Property (except in respect of the Conversion) without the prior consent of the Landlord which consent will not be unreasonably refused or delayed if the application will have no detrimental effect on the continued use of the Property for the Permitted Use.

26.5 Subject to clause 22.1, the Tenant shall not carry out any works at the Property in respect of which the Construction (Design and Management) Regulations 2007 apply without the consent of the Landlord. Such consent is not to be unreasonably withheld or delayed in the case of works in respect of which the Landlord is not otherwise to withhold its consent unreasonably or which the Tenant is obliged to carry out under the terms of this lease.

26.6 The Tenant shall maintain the health and safety file for the Property in accordance with the Construction (Design and Management) Regulations 2007 and shall give it to the Landlord at the end of the term.

26.7 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.

26.8 The Tenant shall keep the Property equipped with all fire prevention, detection and fighting machinery and equipment and fire alarms which are required under all relevant laws or required by the insurers of the Property or reasonably recommended by them or reasonably required by the Landlord and shall keep that machinery, equipment and alarms properly maintained and available for inspection.

## **27. ENCROACHMENTS, OBSTRUCTIONS AND ACQUISITION OF RIGHTS**

27.1 The Tenant shall not grant any right or licence over the Property to a third party.

27.2 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:

(a) immediately give notice to the Landlord; and

(b) take all steps (including any proceedings) the Landlord reasonably requires to prevent or license the continuation of that encroachment or action.

27.3 The Tenant shall not obstruct the flow of light or air to the Property nor obstruct any means of access to the Property.

27.4 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.

27.5 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:

(a) immediately notify the Landlord; and

(b) take all steps (including proceedings) the Landlord reasonably requires to prevent or secure the removal of the obstruction.

## **28. REMEDY BREACHES**

28.1 The Landlord may enter the Property to inspect its condition and state of repair and may give the Tenant a notice of any breach of any of the tenant covenants in this lease relating to the condition or repair of the Property.

28.2 If the Tenant has not begun any works needed to remedy that breach within two months following that notice (or if works are required as a matter of emergency, then immediately) or if the Tenant is not carrying out the works with all due speed, then the Landlord may enter the Property and carry out the works needed.

28.3 The proper costs incurred by the Landlord in carrying out any works pursuant to this clause (and any professional fees and any VAT in respect of those costs) shall be a debt due from the Tenant to the Landlord and payable on demand.

28.4 Any action taken by the Landlord pursuant to this clause shall be without prejudice to the Landlord's other rights, including those under clause 32.

## **29. 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.

## **30. PUBLIC LIABILITY INSURANCE**

The Tenant covenants with the Landlord throughout the Term to keep in force a policy of insurance with a reputable insurance company, incorporating the standard conditions and exemptions of the insurance company, to cover all public liability claims arising from the exercise by the Tenant of the rights granted by this lease and all claims, damages, costs, charges, losses or expenses arising from the wilful act or negligence of the Tenant its employees or contractors in the amount of £10,000,000, or any higher amount the Landlord from time to time reasonably requires, in respect of any one claim for bodily injury or disease or damage to property, and must make available to the Landlord on reasonable demand a copy of the policy or a summary of its terms and a copy of the current premium receipt. If required by the Landlord, the Tenant must procure the noting on the policy of the Landlords interests.

## **31. LANDLORD'S COVENANTS**

31.1 The Landlord covenants with the Tenant that, so long as the Tenant pays the rents reserved by and complies with its obligations in this lease, the Tenant shall have quiet enjoyment of the Property without any lawful interruption by the Landlord or any person claiming under the Landlord.

31.2 The Landlord shall comply with its obligations set out in Schedule One except that when the Landlord has budgetary constraints then Schedule One can be adjusted by agreement between the parties, such agreement of both parties not to be unreasonably withheld or delayed (and upon agreement by the Tenant, the Tenant shall provide the balance of the funding required subject to its affordability having regard to the Tenant's financial position).



## **32. CONDITION FOR RE-ENTRY**

32.1 The Landlord may re-enter the Property at any time after any of the following occurs:

- (a) any rent is unpaid 21 days after becoming payable whether it has been formally demanded or not;
- (b) any breach of any condition of, or tenant covenant, in this lease;
- (c) where the Tenant or any guarantor is a corporation:
  - (i.) 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 guarantor; or
  - (ii.) the making of an application for an administration order or the making of an administration order in relation to the Tenant or guarantor; or
  - (iii.) 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 the guarantor; or
  - (iv.) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant or guarantor; or
  - (v.) the commencement of a voluntary winding-up in respect of the Tenant or guarantor, 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
  - (vi.) the making of a petition for a winding-up order or a winding-up order in respect of the Tenant; or
  - (vii.) 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
  - (viii.) the Tenant otherwise ceasing to exist,
  - (ix.) the tenant losing its charitable status,

32.2 If the Landlord re-enters the Property pursuant to this clause, this lease shall immediately end, but without prejudice to any right or remedy of either party in respect of any breach of covenant by the other.

## **33. LANDLORD'S OPTION TO DETERMINE FOR REDEVELOPMENT**

33.1 In the event of the Property or the means of access to it being required for demolition or in connection with a scheme of rebuilding, refurbishment or reconstruction of any adjoining land owned by the Landlord the Landlord may determine this lease on or before 30 September 2027 by giving to the Tenant not less than five years notice ('the Landlord's Redevelopment Notice').

33.2 The Tenant shall use its reasonable endeavours to continue to operate the Waterloooville Leisure Centre and the Property for the Permitted Use during the period of the Landlord's Redevelopment Notice.

33.3 If, after using its reasonable endeavours to continue to operate the Waterloooville Leisure Centre and following negotiations with the Landlord to investigate all options to continue to operate the Waterloooville Leisure Centre or the closure of the Waterloooville Leisure Centre, in the Tenant's opinion it would not be viable to continue to operate the Waterloooville Leisure Centre following termination of this Lease under the provisions of clause 33.1 then the Tenant may serve a notice on the Landlord at any time during the period of the Landlord's Redevelopment Notice giving the Landlord not less than 12 months notice to determine the lease of the Waterloooville Leisure Centre on the earlier of the date that the Tenant ceases to operate the Property for the Permitted Use or on the date of termination specified in the Landlord's Redevelopment Notice or as extended pursuant to Clause 33.6 and the provisions of this clause 33 (save clause 33.4) shall then also apply in relation to the Waterloooville Leisure Centre.

33.4 It is hereby agreed that the compensation payable under section 37 of the Landlord and Tenant Act 1954 shall be payable upon the Tenant giving vacant possession of the Property to the Landlord consequent upon the earlier of (a) the Tenant ceasing to operate the Property for the Permitted Use or (b) the expiry of the Landlord's Redevelopment Notice, such compensation to be payable irrespective of whether or not the Tenant is able to achieve the continued operation of the Property for the Permitted Use to the end of the notice period and such compensation shall be determined with reference to the fact the Tenant took occupation in 1997 and such occupation has been continuous.

33.5 If the Landlord determines this lease in accordance with this clause then the Landlord shall pay compensation to the Tenant to fully indemnify the Tenant against all loss arising from only capital expenditure previously approved by the Landlord in writing (which, for the avoidance of doubt includes the capital expenditure by the Tenant in connection with the Conversion) (not to be unreasonably withheld or delayed where the expenditure is necessary for the Tenant to remain competitive) that the Tenant has incurred since it took occupation of the Property in 1997 provided that such compensation shall be reduced by depreciation in accordance with the usual accounting standards for depreciation due to the service of the Landlord's Redevelopment Notice or in respect of which licence for alterations was obtained under the relevant Landlord and Tenant Legislation. In the event of any dispute as to the payment of such compensation that matter shall be referred to arbitration in accordance with clause 44.

33.6 The date of the termination of this Lease specified in the Landlord's Redevelopment Notice served pursuant to clause 33.1 may be extended with the written agreement of the Landlord and the Tenant at any time prior to the expiry of the said notice.

#### **34. LANDLORD'S OPTION TO DETERMINE ON NOTICE**

34.1 The Landlord may determine this lease by giving the Tenant not less than five years notice provided that no such notice may be served before 30 September 2022 ('the Landlord's Notice')

34.2 The Tenant shall use its reasonable endeavours to continue to operate the Waterloooville Leisure Centre and the Property for the Permitted Use during the period of the Landlord's Notice.

- 34.3 If, after using its reasonable endeavours to continue to operate the Waterloooville Leisure Centre and following negotiations with the Landlord to investigate all options to continue to operate the Waterloooville Leisure Centre or the closure of the Waterloooville Leisure Centre, in the Tenant's opinion it would not be viable to continue to operate the Waterloooville Leisure Centre following termination of this Lease under the provisions of clause 34.1 then the Tenant may serve a notice on the Landlord at any time during the period of the Landlord's Notice giving the Landlord not less than 12 months notice to determine the lease of the Waterloooville Leisure Centre on the earlier of the date that the Tenant ceases to operate the Property for the Permitted Use or on the date of termination specified in the Landlord's Notice or as extended pursuant to Clause 34.6 and the provisions of this clause 34 (save clause 34.4) shall then also apply in relation to the Waterloooville Leisure Centre.
- 34.4 It is hereby agreed that the compensation payable under section 37 of the Landlord and Tenant Act 1954 shall be payable upon the Tenant giving vacant possession of the Property to the Landlord consequent upon the earlier of (a) the Tenant ceasing to operate the Property for the Permitted Use or (b) the expiry of the Landlord's Notice, such compensation to be payable irrespective of whether or not the Tenant is able to achieve the continued operation of the Property for the Permitted Use to the end of the notice period and such compensation shall be determined with reference to the fact the Tenant took occupation in 1997 and such occupation has been continuous.
- 34.5 If the Landlord determines this lease in accordance with clause 34.1 then the Landlord shall pay compensation to the Tenant to fully indemnify the Tenant against all loss arising from only capital expenditure previously approved in writing (which, for the avoidance of doubt includes the capital expenditure by the Tenant in connection with the Conversion) (not to be unreasonably withheld or delayed where the expenditure is necessary for the Tenant to remain competitive) that the Tenant has incurred since 1 April 2014 provided that such compensation shall be reduced by depreciation in accordance with the usual accounting standards for depreciation due to the service of the Landlord's Notice or in respect of which licence for alterations was obtained under the relevant Landlord and Tenant Legislation. In the event of any dispute as to the payment of such compensation that matter shall be referred to arbitration in accordance with clause 44.
- 34.6 The date of the termination of this Lease specified in the Landlord's Notice served pursuant to clause 34.1 may be extended with the written agreement of the Landlord and the Tenant at any time prior to the expiry of the said notice.
- 34.7 The Landlord may determine this lease by giving the Tenant not less than six but no more than twelve months notice, such notice to take effect not earlier than 30 September 2027 and not later than 30 September 2028 (the Landlord's Notice).
- 34.8 If the Landlord determines this lease in accordance with clause 34.7 the Landlord will not be liable to the Tenant for compensation other than in accordance with statute and any regulatory provision.
- 34.9 If, after using its reasonable endeavours to continue to operate the Waterloooville Leisure Centre and following negotiations with the Landlord to investigate all options to continue to operate the Waterloooville Leisure Centre or the closure of the Waterloooville Leisure Centre, in the Tenant's opinion it would not be viable to continue to operate the Waterloooville Leisure Centre following

termination of this Lease under the provisions of clause 34.7 then the Tenant may serve a notice on the Landlord at any time during the period of the Landlord's Notice giving the Landlord not less than 12 months notice to determine the lease of the Waterlooville Leisure Centre on the earlier of the date that the Tenant ceases to operate the Property for the Permitted Use or on the date of termination specified in the Landlord's Notice or as extended pursuant to Clause 34.10.

- 34.10 The date of the termination of this Lease specified in the Landlord's Notice served pursuant to clause 34.7 may be extended with the written agreement of the Landlord and the Tenant at any time prior to the expiry of the said notice
- 34.11 If the Tenant serves a notice to determine the lease of Waterlooville Leisure Centre made between the parties hereto of even date herewith the Landlord may serve notice to determine this Lease such notice to expire on the same date as the notice to determine the lease of the Waterlooville Leisure Centre.
- 34.12 If the Landlord obtains a report from the UK Quality Scheme for Sport and Leisure ("Quest") or such other independent body that the tenant has failed to (and has no reasonable prospect of remedying such failure) within the period required by the quality assurer operate and maintain a high quality leisure facility and services for the community of Havant and its surrounding areas from the property the Landlord may by agreement with the Tenant serve not less than three months notice on the Tenant to determine this lease and then on the expiry of the notice the Term is to cease and determine immediately, but without prejudice to any rights or remedies that may have accrued PROVIDED FURTHER THAT the provisions of clauses 33.2 and 34.2 shall then apply in relation to the Waterlooville Leisure Centre if this Lease is determined.
- 34.13 If the Property or a substantial part of the Property (and for the avoidance of doubt the swimming pool facility constitutes a substantial part of the Property for the purposes of this clause) is closed to the public for a continuous period of more than two months other than as a result of a temporary and reasonable closure for maintenance repair or building works that have previously been approved in writing by the Landlord or reinstatement or rebuilding works following destruction or damage by fire or other insured perils the Landlord may serve the Tenant with a notice requiring the Tenant to either:-
- (a) Reopen the Property within one month from the date of the notice or;
  - (b) Provide to the reasonable satisfaction of the Landlord a written explanation for the closure within one month from the date of the notice and for the avoidance of doubt any explanation given by the Tenant in accordance with this clause 34.13(b) shall be deemed to be to the reasonable satisfaction of the Landlord if such an explanation reveals that the Landlord's failure to perform its maintenance obligations set out in Schedule One is mainly causative of the closure.

34.14 In the event that the Tenant fails to comply with the notice served in accordance with clause 34.13 the Landlord may (in the event that the Property continues to be closed) at any time thereafter serve on the Tenant two months notice ('Landlord's Two Month Notice') requiring the Property to reopen failing which this lease will determine immediately but without prejudice to any rights or remedies that may have accrued. For the avoidance of doubt the Landlord's Two Month Notice cannot be served in the event that the Landlord's failure to comply with its maintenance obligations is mainly causative of the closure.

### **35. TENANT'S OPTION TO DETERMINE**

35.1 If any of the following events occur the Tenant may determine this Lease at any time during the Term upon giving to the Landlord not less than six months notice of that wish and, then on expiry of the notice the Term is to cease and determine immediately, but without prejudice to any rights or remedies that may have accrued:

35.1.1 if the Landlord, after service of a notice giving the landlord a reasonable period of not less than six months to remedy any failure to comply with its obligations under clause 31.2, has failed to comply to the reasonable satisfaction of the Tenant;

35.1.2 if the Tenant loses its charitable status or is unable to continue due to a lack of trustees or passes a resolution for its winding up;

35.1.3 if the existing car park adjacent to the Property and on the south west side of it ceases to be a car park in its current form available for members of the public;

35.1.4 if the Landlord serves notice to determine the lease of Waterlooville Leisure Centre made between the parties hereto of even date herewith such notice to expire on the same date as the notice to determine the lease of the Waterlooville Leisure Centre.

### **36. LIABILITY**

36.1 At any time when the Landlord or the Tenant is more than one person, then in each case those persons shall be jointly and severally liable for their respective obligations arising by virtue of this lease. The Landlord may release or compromise the liability of any one of those persons or grant any time or concession to any one of them without affecting the liability of any other of them.

36.2 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.

36.3 In any case where the facts are or should reasonably be known to the Tenant, the Landlord shall not be liable to the Tenant for any failure of the Landlord to perform any landlord covenant in this lease unless and until the Tenant has given the Landlord notice of the facts that give rise to the failure and the Landlord has not remedied the failure within a reasonable time.

**37. ENTIRE AGREEMENT AND EXCLUSION OF REPRESENTATIONS**

- 37.1 This lease constitutes the entire agreement and understanding of the parties relating to the transaction contemplated by the grant of this lease and supersedes any previous agreement between the parties relating to the transaction.
- 37.2 The Tenant acknowledges that in entering into this lease it is not relying on, and shall have no remedy in respect of any statement or representation made by or on behalf of the Landlord except those made in writing during the course of negotiations between the parties solicitors leading to completion of this Lease.
- 37.3 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.
- 37.4 Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

**38. NOTICES, CONSENTS AND APPROVALS**

- 38.1 Except where this lease specifically states that a notice need not be in writing, or where notice is given in an emergency, any notice given pursuant to this lease shall be in writing.
- 38.2 A written notice shall be delivered by hand or sent by pre-paid first class post or registered post. A correctly addressed notice sent by pre-paid first class post shall be deemed to have been delivered at the time at which it would have been delivered in the normal course of the post.
- 38.3 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this lease.
- 38.4 Where the consent of the Landlord is required under this lease, a consent shall only be valid if it is given by deed, unless:
- (a) it is given in writing and signed by a person duly authorised on behalf of the Landlord; and
  - (b) 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.
- 38.5 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:
- (a) the approval is being given in a case of emergency; or
  - (b) this lease expressly states that the approval need not be in writing.
- 38.6 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.

**39. GOVERNING LAW AND JURISDICTION**

39.1 This lease shall be governed by and construed in accordance with the law of England and Wales.

39.2 The Landlord and the Tenant irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this lease or the legal relationships established by it.

**40. 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 this lease by virtue of the Contracts (Rights of Third Parties) Act 1999.

**41. LANDLORD AND TENANT (COVENANTS) ACT 1995**

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

**42. STATUTORY POWER**

Nothing expressed or implied in this lease shall prevent or impose on the Landlord any liability for or in relation to the carrying out by the Landlord as a local government authority of the provisions of any public or Local Act of Parliament or any byelaws or regulations made thereunder or the carrying out by the Landlord of any matter or thing on behalf of another statutory authority.

**43. CHARITABLE OBJECTS**

43.1 The Property hereby demised will as a result of this Lease be held by or in trust for Borough of Havant Sport and Leisure Trust, a non exempt charity and the restrictions on disposition imposed by Sections 117 – 121 of the Charities Act 2011 will apply to the Property (subject to Section 117(3) of that Act).

43.2 The liability of the Trustees for the time being of the Borough of Havant Sport and Leisure Trust and any former trustees who may at any future time have any liability in respect of the rents and other monies payable hereunder and any breach of the Tenant covenants and other covenants and provisions of this Lease and whether during the continuance of this Lease or following its determination whether by forfeiture, disclaimer or otherwise shall be limited in amount to the net realisable value of the assets of the said charity for the time being under the control of the Trustees and nothing contained in this Lease entitles the Landlord to any right or remedy against the personal estate, property, effect or assets of any of the Trustees or against any assets for the

time being vested in or otherwise in the hands of the Trustees which are not assets of the said Borough of Havant Sport and Leisure Trust, save in the case of wilful and individual fraud or wrongdoing or wrongful omission on the part of the trustee sought to be made liable.

#### **44. ARBITRATION**

44.1 If any dispute or question whatever arises between:

44.1.1 the parties to this Lease,

44.1.2 a party to this Lease and any of the third parties (if any) on whom this Lease has conferred any benefit, or

44.1.3 any of the third parties (if any) on whom this Lease has conferred a benefit

with respect to the construction or effect of the rights, duties or obligations of the parties to this Lease or any of the third parties (if any) on whom this Lease has conferred any benefit, or any other matters in any way arising out of or connected with this Lease, then the dispute or question must be determined by a single arbitrator.

44.2 The arbitrator is to be appointed by agreement between the parties to the dispute or question or, if they do not agree within 14 days of one of them giving notice to the other of his nomination, by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on the application of any party to the dispute or question.

44.3 The arbitration is to be conducted in accordance with the Arbitration Act 1996 or any statutory amendment or re-enactment of it.

44.4 This arbitration provision does not apply to forfeiture of this Lease, relief against forfeiture of this Lease, or any dispute or question for which another method of resolution is expressly provided by this Lease.

44.5 The arbitrators fees and expenses and any VAT payable on them must be borne by the parties to the dispute or question as the arbitrator awards. If any party to the dispute or question pays those fees and expenses he may recover the proportion of them due from the other party or parties as a debt from the other party.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by affixing  
the common seal of HAVANT BOROUGH COUNCIL in  
the presence of  
Solicitor to the Council



Executed as a deed by affixing  
the common seal of Borough of Havant Sport and Leisure Trust  
in the presence of

-----  


Director



Director/Secretary

## SCHEDULE ONE

### **Maintenance and Asset Obligations**

1. The paragraphs within this schedule reflect, supplement and explain the repairing obligations contained in the Lease.
2. These repairing clauses provide that the responsibility for major buildings and plant repairs and replacement rest with the Landlord (**HBC**) on the basis of a landlord and tenant arrangement.
3. The items identified for replacement at the end of their **Useful Life** (the period of time during which, with regular economic repair and maintenance in accordance with manufacturers' instructions and best practice, the elements continue to support the operation of the leisure centre in a safe and satisfactory manner) and as part of ongoing lifecycle replacement programme are governed by the current most recent condition survey or variation thereof. The current programme is the one produced as part of the McAndrew Martin condition audit completed in 2010. The annual requirements will be agreed as part of the business planning process.
4. HLT shall be responsible for the proper operation, maintenance and repair in accordance with manufacturers' instructions and best practice, of all plant, equipment, fixtures, fittings and machinery installed, incorporated or brought into the leisure centre for the purposes of providing leisure services, in accordance with the Table in this Schedule.
5. The Landlord will be responsible for the procuring, project management, and funding of all the elements of its asset responsibility. Close consultation with the Tenant and the utilisation of the in-house expertise will be a clear requirement in delivering all works.
6. A transparent reporting and approval process will be initiated by the Landlord in consultation with the Tenant.
7. The following table identifies the responsibility for maintenance, repair and replacement in all building elements and the following definitions apply:-

#### Schedule Definitions

WLC: Waterloo Leisure Centre

HLC: Havant Leisure Centre

Building & Plant Equipment		Maintenance & Repair Responsibility		Replacement Responsibility	
		Landlord	Tenant	Landlord	Tenant
1.	Structure of the Property including the roof covering, gutters and down pipes, insulation, structural steel members, load bearing beams & columns	✓		✓	
2.	External and load bearing walls	✓		✓	
3.	Swimming pool tanks including pool tanks, wall and floor finishes		✓	✓	
4.	Floors, internal & external staircases and ramps	✓		✓	
5.	Swimming pool screeds and tiles above and below waterline – at HLC includes steel tank & epoxy lining		✓	✓	
6.	Internal joinery		✓		✓
7.	Sanitary fixtures & fittings including washbasins and showers		✓		✓
8.	Water, gas & electric services supply connections to the buildings	✓		✓	
9.	Water, gas & electric services supply within the centre		✓	✓	
10.	Telephones, computers etc & circuits		✓		✓
11.	Health & safety fittings and appliances		✓		✓
12.	Internal signs and notices		✓		✓
13.	Fitness equipment		✓		✓
14.	Sports Equipment		✓		✓
15.	Any equipment installed by HLT		✓		✓
16.	External signs and notices (installed by HBC)	✓		✓	

	Main Responsibility	Landlord	Tenant	Landlord	Tenant
17.	External signs & notices (Installed by HLT)		✓		✓
18.	External doors, fire doors and large outside windows		✓	✓	
19.	The specialist screeds and playing surfaces		✓	✓	
20.	All external drain pipework and related fittings below the ground	✓		✓	
21.	Internal lighting, associated fixed fittings and electrical equipment		✓	✓	
22.	CCTV		✓	✓	
23.	External lighting and associated fixed fittings		✓	✓	
24.	Artificial sub-structure ceiling		✓	✓	
25.	Pool water treatment plant including sterilisation, monitoring, dosing systems and associated equipment		✓	✓	
26.	Pressure gauges and thermostats		✓	✓	
27.	Air handling units including supply and extract fans, control systems, heat exchangers and associated connections		✓	✓	
28.	Ventilation fans and air conditioning systems including associated controls		✓	✓	
29.	Electrical circuits		✓	✓	
30.	Lifts		✓	✓	
31.	Car parking spaces allocated for centre use, car park hard standing and lighting at HLC	✓		✓	
32.	Grounds maintenance including grassed areas and trees at HLC	✓		✓	
33.	Pool water circulation systems including filter vessels (excluding media), pumps and ancillary equipment		✓	✓	
34.	Primary heating systems and associated equipment		✓	✓	