

SWIMMING POOL MANAGEMENT AGREEMENT

Georgie Conway Leichhardt Community Swim Centre

Ipswich City Council

Australian Crawl (Goodna) Pty Ltd – A.B.N. 21 120 208 255

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SWIMMING POOL MANAGEMENT AGREEMENT

DATE

DETAILS OF PARTIES

Name	Ipswich City Council
Label	Council
Attention	Technical Support Principal Officer
Street Address	45 Roderick Street IPSWICH QLD 4305
Mailing Address	PO Box 191 IPSWICH QLD 4305
Fax Number	(07) 3810 6206

Name	Australian Crawl (Goodna) Pty Ltd
Label	Manager
ACN/ABN	21 120 208 255
Attention	Justin Lemberg
Street Address	Cathedral Village 115 Wickham Street Fortitude Valley QLD 4006
Mailing Address	PO Box 348 CAROLE PARK QLD 4300
Fax Number	

BACKGROUND

- A. The Council is the registered owner of the Land and is also the owner of all improvements, including the Centre, that are erected on that Land.
- B. The Manager has experience in the operation and management of swimming facilities.
- C. This Agreement is to provide for the good management of the Centre and ensure that the facility is maintained and managed to the highest possible standard and to ensure the continued access for residents to high quality swimming facilities.
- D. The Council agrees to appoint the Manager to manage the Centre in accordance with the terms of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

"Agreement" means this Swimming Pool Management Agreement.

"Business Day" means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Ipswich, Australia.

"Business Plan" means the business plan (or plans) required to be prepared by the Manager and provided to Council in accordance with clause 12.1.

"Centre" means the Georgie Conway Leichhardt Community Swim Centre located on the Land and includes the fixtures, fittings, swimming pools, amenities, and where the context permits, the Centre includes Council's Assets.

"Commencement Date" means 1 April 2018.

"Council Nominated Officer" means the Chief Executive Officer or a staff member delegated by Council.

"Council's Assets" means all fixtures, fittings and goods belonging to Council in or on the Centre including those items listed in the inventory in Schedule 3. Where the context permits, the Centre includes Council's Assets.

"Electricity Costs" includes, but is not limited to, the cost of electricity associated with the following: -

- (a) water purification equipment;
- (b) water heating;
- (c) lighting of the Centre, the swimming pools and surrounds; and
- (d) lighting and water heating in the amenities buildings.

"Expiry Date" means 31 March 2028.

"Externally Administered Body Corporate" means a body corporate:

- (a) that is being wound up;
- (b) in respect of the property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;
- (c) that is under administration;
- (d) that has executed a deed of company arrangement that has not yet terminated; or
- (e) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

"Government Authority" means:

- (a) a local, state or federal government;
- (b) a minister, department or agency of any government in (a);
- (c) a corporation, authority or body that is constituted under statute or regulation for a public purpose;
- (d) a holder of a statutory office for a public purpose, or a person charged with the administration of a law; or
- (e) a court, tribunal or commission constituted under statute or regulation.

"GST" has the meaning given by the GST Law.

"GST Law" has the meaning given to "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Land" means the land containing the Centre, located at 21 Toongarra Road, Leichhardt and described as Lot 39 on Crown Plan 902321.

"Maintenance Schedule" means the table of obligations and responsibilities of each party to this Agreement relating to (amongst other matters) the inspection, cleaning, maintenance and repair of the Centre (and, where the context permits, the Council's Assets), which is contained in Schedule 1 of this Agreement.

"Notice" means a notice, demand, certificate, consent, approval, waiver or communication given under this document.

"Revenue" means the total of all amounts received or receivable for all goods or services sold, supplied or disposed of at or from the Centre (whether cash, credit or otherwise and whether made by the Manager or any other person other than where Council receives the amount directly).

"Services" means any water, gas, electricity, lighting, sanitary, hot water, air conditioning, ventilation, security and other services supplied to or enjoyed at the Centre.

"Special Conditions" means the terms (if any) contained in Annexure A.

"Specific Statutory Charges" means Statutory Charges:

- (a) attributable to the Manager because of the Manager's direct use and enjoyment of the Services or facilities or other subject matter of the Statutory Charges; or
- (b) in respect of any activity, matter or thing at or occurring in the Centre.

"Statutory Charges" means all rates, taxes, levies, charges and assessments, duties, impositions, surcharges or fees:

- (a) assessed, charged, imposed, levied or payable in relation to the use or occupation of the Land or the Centre; or
- (b) assessed, charged, imposed, levied or payable in relation to waste or garbage removal or for any other service or facility supplied to or enjoyed on the Land or the Centre;
- (c) assessed, charged, imposed, levied or payable in relation to the provision, reticulation or discharge of water, sewerage or drainage (including pedestal charges and meter rents) or
- (d) assessed, charged, imposed, levied or payable in relation to the payment or receipt of money; or
- (e) which are general rates, differential general rates, minimum general rate levies, separate rates and charges, special rates and charges and utility charges under the *Local Government Act 1993*; or
- (f) which are general rates (including differential rates), special rates and charges, utility charges and separate rates and charges under the *Local Government Act 2009*,

regardless of whether they are assessed, charged, imposed or levied to or on, or payable by, Council or the Manager or any other person.

"Term" means the term of this Agreement, commencing on the Commencement Date and expiring on the Expiry Date (or any earlier date this Agreement is terminated).

1.2 Rules for Interpreting this Document

This clause 1.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The contents page[s] (if any), the Background and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
 - (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (vi) property includes real, personal and intangible property;
 - (vii) any body or agency, if that body or agency ceases to exist, is renamed, reconstituted, replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;
 - (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
 - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other genders.
- (e) If a word is defined, another part of speech or grammatical form of that word has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

-
- (g) An obligation on, warranty by, or right of:
- (i) two or more persons; or
 - (ii) a party that comprises two or more persons,
- is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
- (h) Time is reckoned as follows:
- (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
 - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
 - (A) excluding the day, or the day of the act or event; and
 - (B) including the day on which the purpose is to be fulfilled.
 - (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
 - (A) the day, or the day of the act or event; until
 - (B) the corresponding day in the next appropriate week, calendar month or year.
 - (iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
 - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
 - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.
- (i) Terms defined in the GST Law have the same meaning in this document unless the context makes it clear that a different meaning is intended.

2. TERM OF AGREEMENT

Subject to the terms and conditions of this Agreement, this Agreement will operate for the Term.

3. RELATIONSHIP

- (a) The parties' relationship is one of principal and independent Manager, not employer and employee, agency or partnership.
- (b) The Manager and any of its employees, sub-managers and agents are not entitled to any payments or benefits from the Council other than those provided for in this Agreement.

- (c) the Manager does not have the right or authority to act on behalf of, or bind the Council or to speak on its behalf, and will not indicate to any third party that it has that right or authority unless the Manager has been expressly authorised by the Council in writing.

4. MANAGEMENT OF THE CENTRE

4.1 Conduct business of the Centre

The Manager shall have the sole right during the Term to conduct the business of the Centre.

4.2 Operation of the Centre

- (a) The Manager must operate the business of the Centre, and in that context, must manage the property as an income-producing asset.
- (b) The Manager must comply with all laws and the requirements, notices, orders and requisitions of any relevant Government Authority which relate to the Centre or the Manager's operation or occupation of the Centre.
- (c) The Manager must comply with the reasonable requirements of Council in relation to the proper operation of the Centre, for example, in relation to cleanliness, control or vermin, emergency drills and procedures, and installation, operation and maintenance of equipment.
- (d) The Manager must implement the Manager's current Business Plan in operating the Centre.
- (e) The Manager must ensure that the Centre is kept open to the general public on every day, except:
 - (i) Christmas Day and Good Friday;
 - (ii) any day during any period of closure under clauses 4.2(e), (f), (h) and (i);during the hours:
 - (iii) specified or approved from time to time by Council (Council may change or revoke the specification or approval at any time); or
 - (iv) if no hours are specified or approved, from 7 am to 6 pm.
- (f) The Manager may close the Centre in an emergency or during hours that the Manager cannot lawfully comply with clause 4.2(d).
- (g) The Manager may, with the approval of Council, temporarily suspend trading and close the Centre, or any part of it:
 - (i) if the Manager reasonably considers the suspension and closure commercially prudent or necessary; or
 - (ii) for the purposes of carrying out maintenance on the main swimming pool in the Centre.
- (h) If the Manager requires the Centre to be temporarily closed in accordance with clause 4.2(f), the Manager must notify Council as soon as possible, advising

Council of the reason for the intended closure and how long the Manager intends to close the Centre, and must seek Council's approval (which shall not be unreasonably withheld).

- (i) If Council is required to carry out maintenance on one or all of the swimming pools in the Centre, Council may direct the Manager to close the Centre to the general public for a period specified by Council to allow the work to be carried out.

4.3 Admission Fees and Hourly Fees

- (a) The Manager may charge Admission Fees and Hourly Fees.
- (b) On or around 30 January each year, Council may give the Manager a list of median figures for proposed Admission Fees or Hourly Fees or both. The median figures will be generated by Council from benchmarking corresponding fees of similar facilities within south-east Queensland.
- (c) The Manager must, on or before 31 March each year, give Council a proposed schedule of Admission Fees and Hourly Fees to take effect on the next 1 July.
- (d) Council must notify the Manager whether or not Council approves the proposed schedule of Admission Fees and Hourly Fees. Council must not unreasonably withhold its consent if each item in the proposed schedule does not exceed the median figures by more than 5%. Council may approve, or decide not to approve, the proposed schedule in whole or in part.
- (e) The Manager must not charge to or recover from any person any fee, charge or other payment for:
 - (i) entering or being in the Centre; or
 - (ii) using any swimming pool or other facility in or at the Centre; or
 - (iii) any service supplied at the Centre,
 unless the fee, charge or payment is an Admission Fee or an Hourly Fee.
- (f) In this Agreement:

"Admission Fee" means a fee which:

 - (i) is charged to a person for the right to enter the Centre and use any swimming pool in the Centre; and
 - (ii) is in an amount which is, or which is calculated in accordance with:
 - (A) the Manager's tender for this Agreement; or
 - (B) a proposed schedule approved by Council under clause 4.3(d); or
 - (C) an approval given to the Manager by Council; and
 - (iii) is charged in circumstances provided in or necessarily contemplated by:
 - (A) the Manager's tender for this Agreement;
 - (B) a proposed schedule approved by Council under clause 4.3(d); or

- (C) an approval given to the Manager by Council.

"Hourly Fee" means a fee which:

- (i) is charged to a Swimming Club for a club swim, carnival or similar event; and
- (ii) is in an amount which is, or which is calculated in accordance with:
 - (A) the Manager's tender for this Agreement; or
 - (B) a proposed schedule approved by Council under clause 4.3(d); or
 - (C) an approval given to the Manager by Council; and
- (iii) is charged in circumstances provided in or necessarily contemplated by:
 - (A) the Manager's tender for this Agreement;
 - (B) a proposed schedule approved by Council under clause 4.3(d); or
 - (C) an approval given to the Manager by Council.

"Swimming Club" means each of the following:

- (i) a swimming club;
- (ii) a school;
- (iii) another body or group approved or specified by Council from time to time.

4.4 No Right to Sub-Contract

The Manager must not at any time during the Term of this Agreement:

- (a) sub-contract or assign any of its obligations under this Agreement; or
- (b) leave the Centre, or any part thereof under the control or management of any other person,

unless the Manager has previously obtained the consent of the Council which must not be unreasonably withheld.

4.5 Manager obligations - General Responsibilities

The Manager must carry out the following general responsibilities in operation of the business of the Centre:

- (a) control all aspects of the day-to-day operations of the Centre;
- (b) the recruitment of employees and the training, supervision and dismissal of employees;
- (c) marketing and promotion of the Centre in line with the Manager's Business Plan;
- (d) purchasing of all goods and services required in carrying on the business of the Centre and payment of all expenses relating to the day-to-day business of the Centre, except for the chemicals needed to comply with the Manager's obligations

under this Agreement (which shall be supplied by Council) and unless this Agreement specifies otherwise;

- (e) ensuring that the personal presentation of the Manager and their employees and agents is to an appropriate and acceptable standard so as to present a positive professional image of the Centre (e.g. life guard uniforms, covered non-slip footwear etc.);
- (f) ensuring that all exterior doors, windows and gates in the Centre are securely locked and fastened at all times when the Centre is closed or not being used;

4.6 Manager obligations - Use of the Centre

Without limiting the obligations and responsibilities outlined in the Maintenance Schedule, the Manager must:

- (a) use toilets, sinks, drainage and plumbing facilities in the Centre only for the purpose for which they were constructed or provided, and must not deposit any rubbish in those facilities;
- (b) only prepare or cook food in an area installed and properly equipped for those purposes;
- (c) prohibit smoking within the Centre;
- (d) not display any signs or place any installations on the Centre without the prior written consent of Council;
- (e) keep the Centre (including all swimming pools in the Centre) thoroughly clean, remove any useless property from the Centre, remove all wet refuse daily and all other refuse periodically from the Centre, and store all refuse in proper receptacles located in the Centre;
- (f) keep the Centre free and clean from weeds and generally in accordance with Council's landscape maintenance standards from time to time, including (but not limited to):
 - (i) regularly trim all ornamental shrubs and maintain all garden and landscaping features;
 - (ii) regularly have the lawns mowed;
 - (iii) properly tend and water all shrubs, lawns and garden and landscaping features; and
 - (iv) generally tend and keep the gardens in the Centre in a clean and tidy condition to the reasonable satisfaction of Council;
- (g) keep any irrigation system in good working condition, including inspection and regular servicing of pumps, and inspection, repair and maintenance of the system in accordance with manufacturer recommendations;
- (h) not:
 - (i) obstruct access to, overload or otherwise interfere with or damage any of the Services;

- (ii) damage or destroy anything in or on the Centre;
- (iii) do anything dangerous, noxious, annoying or offensive, immoral or illegal in the Centre;
- (iv) do anything to pollute the Centre or its environment; or
- (v) without Council's approval, keep or use inflammable, explosive or volatile materials in the Centre;
- (i) comply with insurance, sprinkler and fire alarm regulations and any lawful directions given by Council or any relevant Government Authority;
- (j) appoint fire controllers and fire wardens, carry out fire drills when required, comply with emergency evacuation procedures;
- (k) give to Council from time to time when reasonably required (but at least annually) a written testing plan satisfactory to Council for the regular testing and maintenance of all electrical equipment in or on the Centre (including portable equipment that is not permanently installed in the Centre) and comply with those testing plans;
- (l) give Council written reports other evidence as and when required by, and satisfactory to, Council to show that the Manager has complied with its obligations under this clause 4.6.

4.7 Manager obligations – Swimming Pools

Without limiting the obligations and responsibilities outlined in the Maintenance Schedule, the Manager must:

- (a) inspect the pool equipment, solar heating and electrical fittings (including heat pumps, gas heaters and solar heating system) each day to ensure that the fittings are operational and assess whether any servicing, maintenance or upgrade to the fittings may be required from time to time;
- (b) ensure that a free chlorine, total chlorine and pH test of the water in each swimming pool in the Centre is taken:
 - (i) at the time on each day when the pool is first opened for use by members or the public; and
 - (ii) at least once every 2 hours from that time until the pool is closed; and
 - (iii) at further or other times as Council specifies;
- (c) keep a record of those tests;
- (d) whenever the pool is open to members or the public, the Manager must ensure that chlorine and pH test readings are always within the range required under:
 - (i) any applicable law, regulation, local law or policy; or
 - (ii) the range specified by Council from time to time;
- (e) keep a record containing details, on a daily basis, of:

- (i) all chemicals used in connection with the purification of water in or for any swimming pool in the Centre;
 - (ii) the time when the filters have been backwashed; and
 - (iii) any other particulars or information that Council requires from time to time;
- (f) keep any record given to or obtained by the Manager of any test or analysis of the water in any of the pools in the Centre;
- (g) ensure that no person other than the Manager's employees or agents are at the Centre when any swimming pool is being emptied or filled;
- (h) ensure that no springboard, diving board, trampoline or similar implement or thing is placed in installed at any time in, next to or near any swimming pool in the Centre;
- (i) ensure that at all times, except to the extent necessary for the Manager to comply with its other obligations under this Agreement, a minimum of 2 lanes in the main swimming pool in the Centre are kept open for use by the general public. If there is more than one swimming pool in the Centre, Council may designate which one is the main swimming pool and Council's designation is determinative.

4.8 Technical Operations Guidelines

- (a) The Manager must comply with all the procedures, requirements and obligations under any Technical Operations Guidelines from time to time.
- (b) For the purposes of this clause, "**Technical Operations Guidelines**" are guidelines, a manual, document or series of documents that:
 - (i) is published by Council;
 - (ii) contains procedures, requirements and obligations relating to technical operations with or without other matters;
 - (iii) Council notifies the Manager that the Manager must comply with or that it applies to the Centre; and
 - (iv) Council has not notified the Manager that Council has revoked.
- (c) If there is any inconsistency between the terms of this Agreement and the Technical Operations Guidelines, the Technical Operations Guidelines will prevail to the extent of the inconsistency.

4.9 Council's Obligations

- (a) Without limiting the obligations and responsibilities outlined in the Maintenance Schedule, Council must:
 - (i) be responsible for any vandalism, wilful destruction, wilful damage and graffiti for any part of the Centre or the Council's Assets unless caused by the Manager;
 - (ii) pay all Statutory Charges relating to the Land or the Centre, other than any Specific Statutory Charges;
 - (iii) supply the Manager with the chemicals reasonably required to enable the Manager to comply with its obligations under clause 4.7 (for avoidance of doubt, any equipment needed by the Manager to comply with clause 4.7 is to be supplied by the Manager); and

-
- (iv) pay all Electricity Costs reasonably used by the Manager in operating the Centre in accordance with this Agreement, subject to the Manager:
 - (A) not misusing the electricity supply; and
 - (B) taking reasonable care to minimise Electricity Costs.
 - (b) The following applies to Council's obligations under clause 4.10(a)(ii):
 - (i) the chemicals will remain the property of Council until they are used by the Manager to comply with its obligations under clause 4.7;
 - (ii) Council gives no warranty about the chemicals and the Manager must satisfy itself that the chemicals are fit for their intended purpose and are of merchantable quality before using them;
 - (iii) the Manager cannot require Council to acquire chemicals from any particular supplier;
 - (iv) the Manager cannot require Council to acquire chemicals of a particular brand or make;
 - (v) the Manager must give Council reasonable advance notice before the Manager runs out of the chemicals held by the Manager and previously supplied to the Manager by Council.

5. MANAGEMENT OF THE CENTRE - EMPLOYEES

5.1 Manager and Staff Qualifications

- (a) The Manager warrants that as of the Commencement Date it possesses and that it shall ensure that its employees and agents (where applicable):
 - (i) shall possess the following qualifications, awards and certifications throughout the Term of this Agreement:
 - (A) a Pool Plant Operators Certificate;
 - (B) a Bronze Medallion;
 - (C) a Pool Lifeguard Certificate;
 - (D) a Positive Notice Blue Card for Child Related Employment;
 - (E) a First Aid Certificate; and
 - (ii) are competent, appropriately qualified and have the necessary skills to conduct the business of the Centre.
- (b) The First Aid Certificate referred to in clause 5.1(a)(i)(E) must be issued by at least one of the following organisations:
 - (i) The Royal Life Saving Society Australia;
 - (ii) Surf Life Saving Australia;
 - (iii) St John Ambulance Australia;

-
- (iv) Queensland Ambulance Service;
 - (v) The Red Cross Society Australia;
 - (vi) an Australian State or Territory constituent body of one of the above organisations.
- (c) In the event that any of the above qualifications, awards or certificates held by the Manager expire or are otherwise terminated during the Term of this Agreement, the Manager must immediately inform Council. Council will advise the Manager as to what course of action Council requires the Manager to take in relation to the expiration or termination of the relevant qualifications, awards or certificates. Council may, in its discretion absolutely, terminate this Agreement on notice to the Manager.
- (d) A reference in this clause 5.1 to a particular organisation includes a reference to any organisation that succeeds to the functions or role of such organisation in the event that such organisation is disbanded or otherwise ceases to exist.
- (e) A reference in this clause 5.1 to a particular qualification, award or certification includes a reference to an equivalent qualification, award or certification, dealing with the same or substantially the same skills, competencies and subject matter as is covered by the relevant qualification, award or certification as at the Commencement Date, and awarded, granted or offered by the same organisation as at the Commencement Date (subject to clause 5.1(c)), with that organisation's certification of what is an equivalent qualification, award or certification being final and determinative.

5.2 Designated Person in Charge

- (a) The Manager must ensure that an individual is continuously appointed by the Manager as the person who is primarily responsible for the day to day running, maintenance, lubrication and cleanliness of all swimming pools and water treatment plant at the Centre. This person is called the **"designated person"**.
- (b) The Manager must, on request, notify Council of the name of the designated person.
- (c) The Manager must ensure that the designated person:
 - (i) is a person acceptable to Council; and
 - (ii) is not a person who Council has decided, on reasonable and lawful grounds, is not suitable to be the designated person.
- (d) The Manager must ensure that the designated person has successfully completed the following courses prior to the person's appointment as a designated person:
 - (i) a Pool Plant Operations course or an equivalent course conducted by an accredited training organisation acceptable to Council or
 - (ii) another course acceptable to Council in its discretion.
- (e) The Manager must give Council a certificate of the successful completion of the course promptly after Commencement Date, the appointment of the designated person or the end of the course.

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- (f) If the designated person ceases to be appointed by the Manager to be primarily responsible for the day to day running, maintenance, lubrication and cleanliness of all swimming pools and water treatment plant at the Centre, the Manager must within 7 days:
- (i) notify Council of this fact;
 - (ii) appoint a new designated person; and
 - (iii) notify Council of the appointment.

5.3 Supervision of Pools

- (a) Without limiting clause 5.1(a), the Manager must employ or engage efficient, competent and appropriately qualified attendants to:
- (i) supervise and monitor the use of each swimming pool in the Centre;
 - (ii) ensure the safety of people at or using the Centre; and
 - (iii) protect the Centre and the any of Council's assets within the Centre.
- (b) For the purposes of clause 5.3(a), a person is an appropriately qualified attendant if he or she:
- (i) currently holds a Pool Lifeguard Certificate issued by The Royal Life Saving Society Australia (or an equivalent course offered by that organisation from time to time, with the organisation's certification of what is an equivalent course being final and determinative); and
 - (ii) currently holds a First Aid Certificate as referred to in clause 5.1(a)(i)(E); and
 - (iii) holds any further or other relevant qualifications specified by Council from time to time.
- (c) Without limiting clause 5.1(a) or 5.3(a), the Manager must ensure that:
- (i) a specified person is always in charge of the swimming pools in the Centre whenever the Centre is open to the public; and
 - (ii) the specified person in charge is someone who:
 - (A) currently holds a Pool Lifeguard Certificate issued by The Royal Life Saving Society Australia (or an equivalent course offered by that organisation from time to time, with the organisation's certification of what is an equivalent course being final and determinative); and
 - (B) currently holds a First Aid Certificate as referred to in clause 5.1(a)(i)(E); and
 - (C) holds a current certificate of the qualifications covered in subparagraphs (A) and (B) from a qualified examiner who is acceptable to Council (acting reasonably); and
 - (D) is a competent swimmer; and

- (E) holds any further or other relevant qualifications specified by Council from time to time.

5.4 Employee Records

The Manager must keep a record of the names of the employees who are from time to time, or who have been, employed or engaged at the Centre. The Manager must include in that record:

- (a) the details of the qualifications, swimming and life saving ability, records and qualifications to show whether the Manager has complied with the requirements of this clause 5; and
- (b) the details of the days and hours worked by that person; and
- (c) any other details that Council lawfully directs the Manager to include.

6. HEALTH & SAFETY

6.1 Workplace Health & Safety

The Manager must:

- (a) at all times have in place a documented work health and safety management system ("**WHSMS**"); and
- (b) ensure that the WHSMS is at all times suitable for the nature of the activities carried on at or from the Centre so as to ensure compliance with all applicable laws relating to work health and safety and the requirements of any Government Authority (including, but not limited to, Council's safety policy);
- (c) ensure that the WHSMS includes (as a minimum) the following information:
 - (i) the identification of a person responsible for ensuring that work health and safety policies and procedures are implemented, and detailing that persons responsibilities;
 - (ii) details of Centre safety and emergency policies and procedures (including hazard/injury/incident reporting and reporting of notifiable incidents);
 - (iii) details of Centre training and induction policies and procedures;
 - (iv) the maintenance and control of safety records;
 - (v) details on hazard inspections and audit processes (including the testing of fire and other emergency equipment); and
 - (vi) details on risk management and the inclusion of a risk register;
- (d) give Council a copy of the WHSMS whenever Council asks for it;
- (e) give Council any evidence Council requests to demonstrate whether the Manager has complied with or is complying with the WHSMS; and
- (f) comply with a request under subparagraphs (d) and (e) promptly, and in any event, within 7 days.

6.2 Guidelines for Safe Pool Operations

- (a) The Manager must:
 - (i) at all times have in place documented policies and procedures to comply, as a minimum, with the Guidelines For Safe Pool Operations ("GSPO") published from time to time by The Royal Life Saving Society Australia;
 - (ii) give Council a full copy of those policies and procedures whenever the Council asks for it;
 - (iii) give Council any evidence Council requests to demonstrate that the Manager has complied with or is complying with those policies and procedures; and
 - (iv) comply with a request under subparagraphs (ii) and (iii) promptly, and in any event, within 7 days.
- (b) In this clause 6.2:
 - (i) a reference to The Royal Life Saving Society Australia includes a reference to any organisation that succeeds to the functions or role of The Royal Life Saving Society Australia if that organisation is disbanded or otherwise ceases to exist; and
 - (ii) a reference to the GSPO includes a reference to any substitute document, or set of guidelines, dealing with the same or substantially the same subject matter as is dealt with by the GSPO as at the Commencement Date.

6.3 Accidents

- (a) If an accident occurs at the Centre and a person is injured or appears to have suffered an injury or potential injury, the Manager must:
 - (i) immediately notify the nearest ambulance centre; and
 - (ii) then notify the Council Nominated Officer by the quickest available method.
- (b) If a danger or misadventure affecting or potentially affecting any person or property occurs at or affects the Centre (including any incident involving a water pipe or electrical light, wirings or fittings), the Manager must immediately notify the Council Nominated Officer.
- (c) If a major theft or loss of property occurs or is alleged to have occurred at or from the Centre, the Manager must:
 - (i) immediately notify the nearest police station; and
 - (ii) then notify the Council Nominated Officer by the quickest available method.
- (d) The Manager must keep records of any matters referred to in this clause 6.3.

6.4 Safety Equipment

- (a) The Manager is responsible for the supply, maintenance, repair and (where necessary) upgrade of all Safety Equipment, and for ensuring that all Safety

Equipment complies with all applicable laws and the requirements of any Government Authority.

- (b) In this clause "**Safety Equipment**" includes (but is not limited to):
- (i) rescue boards and tubes;
 - (ii) binoculars;
 - (iii) whistles;
 - (iv) spinal boards;
 - (v) first aid kits;
 - (vi) automated external defibrillator;
 - (vii) air bag oxygen resuscitator (and oxygen required for the resuscitator);
 - (viii) stiff neck collars;
 - (ix) two way radio communications.

6.5 Lighting

- (a) The Manager must ensure that any swimming pool, administration building or other area used or able to be used by swimmers, spectators and other members of the public at the Centre are lit by adequate electric lighting during times when the Centre is open to the general public if:
- (i) it is dark;
 - (ii) there is insufficient light for the safety and convenience of swimmers, spectators and members of the public at the Centre.
- (b) Subject to the obligations and responsibilities outlined in the Maintenance Schedule, the Manager must promptly replace all broken, burnt out or unserviceable lamps, bulbs or fluorescent tubes with lamps, bulbs or tubes of at least an equivalent quality and intensity.

7. MANAGER'S OUTGOINGS

- (a) The Manager must pay (or reimburse Council for):
- (i) all Specific Statutory Charges;
 - (ii) all assessments for Services supplied to the Centre in the Manager's name;
 - (iii) all salaries, wages and related costs and expenses incurred in the employment or engagement of employees or contractors by or for the Manager at the Centre or in connection with the business of the Centre; and
 - (iv) any expenses incurred in complying with the Manager's obligations under this Agreement,

excluding Electricity Costs (the "**Manager's Outgoings**").

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- (b) If any Manager's Outgoings are charged to or payable directly by the Manager, the Manager must pay it on time.
 - (c) If any Manager's Outgoings are charged to or payable by Council:
 - (i) Council may demand payment of the Manager's Outgoings from the Manager at any time after Council has incurred or ascertained the outgoings amount (even if the Council has not yet paid it) or at any time after the Council has paid the outgoings amount;
 - (ii) Council may make the demand by giving the Manager an invoice; and
 - (iii) the Manager must pay the invoice within 14 days.
 - (d) Notwithstanding clause 7(b) or (c), where possible, and unless Council agrees otherwise in a particular case, the Manager must ensure that all accounts in relation to Manager's Outgoings are opened and maintained in the name of the Manager during the Term.
 - (e) Council will have, and keep, accounts for Electricity Costs connected in its own name or in the name of another entity nominated by Council.
 - (f) The Manager must pay Council's reasonable legal and other costs, charges and expenses (on a full indemnity basis) incidental to:
 - (i) an application for consent under this Agreement (even if consent is not given);
 - (ii) an assignment of this Agreement (even if the assignment does not proceed);
 - (iii) a rescission, termination or attempted termination of this Agreement;
 - (iv) a lawful notice given by Council to the Manager under this Agreement;
 - (v) any proceedings which Council brings to enforce the Manager's performance of this Agreement; and
 - (vi) any other costs which Council incurs because the Manager breaches this Agreement.

8. NOT USED

9. COUNCIL'S ASSETS

- (a) Council gives the Manager a right to use the Council's Assets during the Term.
- (b) The Manager must not remove, or allow to be removed, any of the Council's Assets from the Centre without written permission from Council.
- (c) The Manager may use Council's Assets only for the purpose of conducting the business of the Centre.
- (d) If any of Council's Assets are lost or destroyed:
 - (i) the Manager must replace them; and

- (ii) the replacement item then becomes Council's Asset for the purpose of this Agreement.
- (e) If any of Council's Assets are damaged, the Manager must repair the item to the condition and state of repair it was at the Commencement Date.
- (f) At the end of the Term, the Manager must:
 - (i) give back to Council all of Council's Assets; and
 - (ii) ensure, and do everything necessary to ensure, that all of Council's Assets are in working order and operational and otherwise in at least as good a condition and state of repair as they were at the Commencement Date.
- (g) If the Manager fails to comply with clause 9(f)(i) Council may recover from the Manager, as a debt due and owing, the higher of:
 - (i) any value for the Council's Assets which is specified in this Agreement (if any);
 - (ii) the actual value of the Council's Assets; or
 - (iii) the cost incurred by Council in replacing the Council's Assets, putting the assets in working order, making them operational and putting them in as good a condition and state of repair as they were in at the Commencement Date.

10. REPAIRS AND MAINTENANCE

10.1 General Repair and Maintenance Obligations

- (a) Without limiting any other provision of this Agreement, the Manager must:
 - (i) keep the Centre and the Council's Assets in good repair;
 - (ii) repair or replace all broken glass that is damaged by the wilful or negligent act of the Manager, the Manager's employees, agents, members, guests or invitees, with glass of the same or substantially similar quality;
 - (iii) promptly make good any damage to the Centre or the Council's Assets that it causes or that is caused by the Manager's employees, agents, members, guests or invitees, to the reasonable satisfaction of Council; and
 - (iv) comply in all respects with the obligations specified as being the responsibility of the Manager in the Maintenance Schedule.
- (b) For the purposes of subparagraph (a) 'good repair' is to be assessed having regard to the condition of the Centre (and Council's Assets) at the Commencement Date (or an earlier date, being the date that the Manager first took possession or entered into occupation of the Centre).

10.2 Maintenance Schedule

- (a) Both parties agree to comply in all respects with the obligations and responsibilities outlined in the Maintenance Schedule.

- (b) If there is any inconsistency between the terms of this Agreement and the Maintenance Schedule, the Maintenance Schedule will prevail to the extent of the inconsistency.

10.3 Manager Repair Obligations

- (a) The Manager must repair or reinstate any part of the Centre or the Council's Assets that are damaged or destroyed by:
 - (i) a risk for which the Manager is required by this Agreement to hold insurance (regardless of whether the Manager actually holds that insurance or can recover under that insurance);
 - (ii) an Insured Risk if the Manager caused or contributed to the damage or destruction such that Council is either unable to make an insurance claim or recover the full amount that would otherwise have been recoverable from the insurer,but otherwise, the Manager does not have to repair or reinstate a part of the Centre (or Council's Assets) damaged or destroyed by an Insured Risk.
- (b) This clause is to be read subject to each party's responsibilities outlined in the Maintenance Schedule.
- (c) In this clause, an "Insured Risk" means a risk for which the Council insures in respect of the Centre or the Council's Assets from time to time.

10.4 Structural Repairs and Maintenance

Subject to the obligations and responsibilities outlined in the Maintenance Schedule, the Manager is not required to undertake maintenance or repairs of a structural nature, unless required as a result of:

- (a) failure by the Manager to comply with its obligations under this Agreement;
- (b) the Manager's act, neglect or default;
- (c) a requirement under a law or a requirement of a Government Authority arising from or relating to the Manager's particular use of the Centre;
- (d) a requirement under a law or a requirement of a Government Authority arising from or relating to the characteristics of people at or using the Centre; or
- (e) a requirement reasonably imposed by Council to do such work in order to eliminate or reduce danger to the Centre, people at or who may enter or use the Centre or any neighbouring land or people at or who may enter the neighbouring land.

10.5 Alterations or Additions

- (a) The Manager must not:
 - (i) make any structural alteration or addition to the Centre (regardless of whether the Manager is required to do so under clause 10.4);

- (ii) install any electrical wiring, equipment or appliance to provide water, gas, lighting, air-conditioning, heating, cooling or ventilation to the Centre;
- (iii) install any partitions; or
- (iv) carry out any other works to the Centre (other than in compliance with its obligations under this Agreement),

without first obtaining Council's approval.

- (b) The Manager must ensure that any work it does at or to the Centre or the Council's Assets under clause 10.5 or otherwise in compliance with its obligations under this Agreement is done:
 - (i) in a proper and workmanlike manner;
 - (ii) by contractors approved by Council (Council must not unreasonably withhold its approval);
 - (iii) without causing unreasonable disturbance to neighbouring property owners; and
 - (iv) in accordance with:
 - (A) any conditions imposed by Council (including about what parts of the works are to remain or be removed and what is to be reinstated and to what condition when this Agreement ends);
 - (B) any plans or specifications or schedule of finishes approved by Council (Council must not unreasonably withhold its approval);
 - (C) all laws and the requirements of all Government Authorities; and
 - (D) Council's other reasonable requirements and directions.

10.6 Council's Inspection

Council (including a Council Nominated Officer) may enter the Centre (with or without notice):

- (a) at all reasonable times; and
- (b) if there is an emergency, at any time (and specifically without the need for any notice),

and may inspect and view the Centre and the Council's Assets (to ascertain their condition and state of repair), to comply with its obligations under the Maintenance Schedule or otherwise under this Agreement, to exercise its rights under this Agreement (including any right to inspect records required to be kept by the Manager), or to show the Centre to any prospective purchaser or manager.

10.7 Notice to Repair

- (a) Council may serve the Manager with a Notice requiring the Manager to repair or maintain, within a reasonable time, a defect, item or matter which is the Manager's responsibility under this Agreement.

- (b) If the Manager does not comply with a Notice given to the Manager under subparagraph (a) within the time specified in the Notice, Council may carry out the repair, the defect or maintain the item or complete the matter, at the Manager's expense.
- (c) The Manager must advise the Council of any repair or maintenance work required at the Centre or to the Council's Assets which is not the responsibility of the Manager under this Agreement as soon as the Manager becomes aware that the work is required.

11. INSURANCE, RISK AND INDEMNITY

11.1 Public Liability Insurance

- (a) The Manager must effect a public liability insurance policy with an insurer approved by Council, in the name of the Manager and noting the interests of Council, covering legal liability for any loss or damage to any property and for the injury (including death) of any person arising out of anything done or omitted on or about the Centre or any improvements thereon and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof. Such policy must:
 - (i) be for an amount of not less than twenty million dollars (\$20,000,000.00) in respect of all claims arising out of a single event or such higher amount as Council may reasonably require;
 - (ii) be effected on a 'claims occurring' basis so that any claim made by the Manager under the policy after the expiration of the period of policy cover but relating to an event occurring during the currency of the policy will be covered by the policy subject to the claim meeting the policy's other terms and conditions;
 - (iii) be effected on such other reasonable terms and conditions as may be required by Council; and
 - (iv) be maintained at all times during the Term.
- (b) The Manager must, as soon as practicable, inform Council, in writing, of the occurrence of any event that the Manager considers is likely to give rise to a claim under the policy and must keep Council fully informed of subsequent actions and developments concerning the claim.
- (c) The Manager must renew such policy, at the Manager's expense, each year during the Term and provide a certificate of currency to Council within 14 days of the commencement of each respective renewal period.
- (d) Upon receipt of a notice of cancellation, the Manager must immediately effect another insurance policy in accordance with clause 11.1(a).

11.2 Other Insurances

- (a) The Manager must:
 - (i) insure all plate and other glass in the Centre against breakages for which the Manager is responsible under this Agreement;

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- (ii) insure against any other risk reasonably required by Council; and
 - (iii) have other insurances which are required by law,
at all times during the Term.
- (b) The Manager must:
- (i) effect each policy with an insurer approved by Council;
 - (ii) take out and maintain the policies in the name of the Manager and noting the interests of Council;
 - (iii) ensure that the cover under the policies includes loss or damage to property and death of or injury to persons; and
 - (iv) give Council a certificate of currency for each policy before the Commencement Date, and within 14 days of the commencement of each renewal period.

11.3 Council's Insurance

Without limiting the Manager's obligations under this clause 11, Council will take out and maintain at all times during the Term general insurance for the improvements, plant, equipment and chattels owned by Council within the Centre.

11.4 Additional Premiums

The Manager must pay any extra or additional premiums incurred by Council for any extra risk caused by the use of the Centre by the Manager.

11.5 Prejudice of Insurance

The Manager must not do or omit to do anything which may:

- (a) increase the premium on any insurances taken out by Council relating to the Centre; or
- (b) allow an insurer to refuse a claim under any insurances taken out by Council relating to the Centre.

11.6 Risk and Release

The Manager occupies and uses the Centre at its own risk. Council is not liable to the Manager for damage to the Manager's property or for loss of profits, regardless of the cause and including where caused by:

- (a) any defect in the Centre or Council's Assets;
- (b) any defect in the operation of Council's Assets, any facilities or the Services to the Centre; and/or
- (c) water, fire or other like cause.

11.7 Indemnity

- (a) The Manager indemnifies Council against any action, demand, proceeding, loss, expense or other liability arising during or after the Term from:
 - (i) the Manager not complying with the obligations imposed on the Manager under this Agreement;
 - (ii) the Manager's use of the facilities or Services to the Centre;
 - (iii) the escape of any substance from the Centre or a place within the Centre other than as a result of something done by Council; or
 - (iv) the Manager occupying or using the Centre.
- (b) This indemnity:
 - (i) extends to any action, demand, proceeding, loss, expense or other liability made or brought against Council by the Manager or by any other person, or incurred by Council in favour of the Manager or any other person;
 - (ii) extends to penalties and legal and other costs incurred by Council;
 - (iii) may be enforced by Council at or prior to the finalisation or establishment of the action, demand, proceeding, loss, expense or other liability to which it relates; and
 - (iv) does not apply to an action, demand, proceeding, loss, expense or other liability for personal injuries to the extent that it is caused by the Council and/or its respective servants and contractors.
- (c) Council's exemption from liability and indemnity extends to its respective servants and contractors.

11.8 No Supervision

The Manager acknowledges and agrees that Council:

- (a) is not subject to;
- (b) does not assume; and
- (c) will not be taken as a result of any act or omission to be subject to or have assumed,

any obligation to supervise or monitor the Manager in its use of the Centre or in its compliance or otherwise with its obligations under this Agreement.

11.9 Obligations Not Exhaustive

The Manager acknowledges and agrees that:

- (a) the Manager's obligations under this Agreement are not, and are not intended to be, an exhaustive code of the risk management and other measures that the Manager must employ in order to fulfil its duty of care and other legal responsibilities; and

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- (b) the Manager is solely responsible for:
 - (i) determining or finding out whether it must employ other measures, in addition to fulfilling its obligations under this Agreement, in order to comply with its duty of care and its other legal obligations; and
 - (ii) employing and effectively carrying out those other measures.

11.10 Manager to Indemnify Council

The Manager specifically agrees that:

- (a) the indemnity contained in clause 11.7 extends to any action, demand, proceeding, loss, expense or other liability that could have been brought or made against or incurred by Council but for clause 11.8 or 11.9; and
- (b) despite anything else in clause 11.7, only the Manager will be taken to have caused an action, demand, proceeding, loss, expense or other liability even if:
 - (i) Council had but did not exercise the power, under this Agreement or otherwise, to direct or require the Manager to do something that would or could have prevented the action, demand, proceeding, loss, expense or other liability; or
 - (ii) Council had and did exercise such power, except to the extent that the action, demand, proceeding, loss, expense or other liability is a direct and inevitable consequence of the Manager doing something it was directed or required to do under that power (as distinct from merely being a consequence of the way the thing was done).

11.11 Council Released

If a person other than Council becomes the registered trustee of the Land and/or the owner of the Centre, then Council is released from all obligations under this Agreement.

12. PERFORMANCE MANAGEMENT

12.1 Submission of Business Plans

- (a) The Manager must:
 - (i) within 1 month after the Commencement Date; and
 - (ii) by no later than 30 April in each year,give Council a business plan ("**Business Plan**").
- (b) Each Business Plan must contain:
 - (i) a management plan incorporating detailed actions and strategies for the Centre for the forthcoming financial year;
 - (ii) a projection of Revenue that the Manager estimates will be derived in the forthcoming financial year;
 - (iii) a detailed marketing plan and promotion strategy for the Centre for the forthcoming financial year; and

- (iv) any other content that Council reasonably requires and notifies the Manager of from time to time.
- (c) Each Business Plan must be:
 - (i) of sufficient detail to comply with the reasonable requirements of Council;
 - (ii) in a form; and
 - (iii) given in the medium and in the manner,notified by the Council to the Manager from time to time.

12.2 Updating of Business Plans

- (a) The Manager:
 - (i) may at any time; and
 - (ii) if the Manager knows or ought to reasonably suspect that the content of its Business Plan (or any assumption on which any of the content is based) is or has become substantially obsolete, incorrect or incomplete, must,

add to or delete content from its Business Plan by giving Council an updated version of its Business Plan incorporating the amendment, addition or deletion.
- (b) Council may, after being given a Business Plan (or an updated version of a Business Plan) notify the Manager that:
 - (i) it considers that the Business Plan is deficient in a stated way; or
 - (ii) it requires the Business Plan to be amended, added to or have content deleted in a stated way.
- (c) If Council exercises its rights under clause 12.2(b), the Manager must, within 14 days, give Council an updated Business Plan that:
 - (i) remedies the stated deficiency to Council's reasonable satisfaction; or
 - (ii) incorporates the stated amended, addition or deletion,as the case may require.
- (d) When the Manager gives Council a Business Plan (or an updated Business Plan), that Business Plan becomes the Manager's current Business Plan for the purpose of this Agreement.

12.3 Implementation of Business Plans

- (a) The Manager must:
 - (i) implement the Manager's current Business Plan; and
 - (ii) not depart substantially from the Manager's current Business Plan,in management and operation of the Centre.

- (b) The obligations contained in clause 12.3(a) are subject to the Manager's obligations under this Agreement.

12.4 Key Performance Indicators

- (a) Council may from time to time notify the Manager (in writing) of:
 - (i) key performance indicators ("KPI's") against which the Council proposes to assess the standard and quality of performance by the Manager in carrying out its obligations under this Agreement; and
 - (ii) the quantitative data or qualitative criteria to which Council proposes to have regard in making that assessment.
- (b) Unless and until Council notifies the Manager of any replacement, amended, altered or new KPI's (and, if relevant, the data or criteria to which Council proposed to have regard) the KPI's are those set out in Schedule 2.
- (c) The Manager acknowledges that it is a condition of this Agreement that the Manager meets the KPI's, and must, during the Term, achieve the KPIs to Council's satisfaction.
- (d) If a KPI or a performance indicator corresponding to a KPI is expressed as an obligation or expectation:
 - (i) the Manager must fulfil that obligation or achieve that expectation;
 - (ii) Council must act reasonably in determining whether the obligation has been fulfilled or the expectation has been met; and
 - (iii) if Council decides that the Manager has not fulfilled an obligation or achieved an expectation, then the Manager has committed a breach of this Agreement.
- (e) Neither the KPIs, nor anything done in administering the KPIs, reduces or abrogates any other obligation of the Manager under this Agreement or relieves the Manager from its obligations to comply with this Agreement.

12.5 Annual Performance Reviews

- (a) The Manager must, within 28 days after the end of each financial year, give to Council a report that:
 - (i) self-assesses the Manager's performance of its functions under the Agreement during the preceding year, with particular reference to the applicable KPI's during that year; and
 - (ii) contains other information or content that Council decides and notifies the Manager from time to time.
- (b) Council may, at the end of each financial year, conduct its own assessment of the Manager's performance of its functions under this Agreement during the preceding year, with particular reference to the applicable KPI's during that year.
- (c) In connection with an assessment by Council, Council may require the Manager to:

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- (i) attend meetings, or have specified employees or agents of the Manager attend meetings, with representatives of Council;
 - (ii) give information to Council;
 - (iii) do other things which Council reasonably requires,
- and the Manager must comply with Council's requirements.
- (d) Council may, after it has either or both:
- (i) been given a report by the Manager on the Manager's performance of its functions under this Agreement; and
 - (ii) conducted its own assessment of the Manager's performance,
- give the Manager a report or a notice that specifies actions, processes, outcomes or objectives that Council requires to the Manager to do, implement or achieve in the management and operation of the Centre and the Manager must comply with the report or notice.

12.6 Performance Monitoring Scheme

- (a) The Manager must, if requested by Council, on behalf of Council, subscribed to a performance monitoring scheme specified or approved by Council for either or both of the following purposes:
 - (i) monitoring, measuring or improving the performance the Centre;
 - (ii) benchmarking the performance of the Centre against comparable centres or facilities.
- (b) The Manager must:
 - (i) properly participate in the specified or approved performance monitoring scheme;
 - (ii) do, on time, all things that the operator of the scheme requires participants of the scheme to do; and
 - (iii) give Council a copy of any report or submission given by or to the Manager for the purposes of the scheme, immediately after the report or submission is given by or to the Manager.

13. FINANCIAL MANAGEMENT

13.1 Recording of Revenue and Manager's Outgoings

- (a) The Manager must maintain detailed records recording the Revenue of the Centre and the following categories of that Revenue:
 - (i) Admission Fees and Hourly Fees;
 - (ii) carnival fees and special event fees;
 - (iii) pool / hall / room / facility hire;

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- (iv) kiosk sales (food and beverage);
 - (v) kiosk sales (equipment, swimwear and sportswear);
 - (vi) income received from the following:
 - (A) learn to swim;
 - (B) squad;
 - (C) aqua aerobics;
 - (D) any other specialised activity;
 - (vii) other sundry income (including income received from third parties who may pay to use or hire any of the areas or facilities within the Centre, and including income received from any licensee of any part or part of the Centre);
 - (viii) any further or other categories that Council notifies to the Manager from time to time.
- (b) The Manager must ensure that all Revenue of the Centre is accurately recorded and is recorded in the appropriate category of Revenue.
 - (c) The Manager must maintain detailed records recording expenditure in relation to the management and operation of the Centre, including the Manager's Outgoings.
 - (d) The Manager must ensure that the records required to be maintained under this Agreement are:
 - (i) prepared and compiled according to:
 - (A) any standards that Council decides and notifies to the Manager from time to time; and
 - (B) except to the extent that those standards otherwise require, the accounting standards applying from time to time under the *Corporations Act 2001*,
 - (ii) of sufficient detail to comply with any reasonable requirements of Council;
 - (iii) kept in a format the Council reasonably specifies from time to time;
 - (iv) kept at the Premises (unless Council consents otherwise);
 - (v) readily accessible and retrievable (so that the Manager can comply with its obligations under this Agreement, including under clause 13.2).
 - (e) Unless Council has specified otherwise, the records must be kept in the form of a document or book on paper, or electronically on a computer; and may consist of more than one document.
 - (f) The Manager must give all records to the Council at the end of the Term.
 - (g) The Manager:

- (i) warrants and represents to Council that each of the reports will be accurate, up-to-date, not incomplete in any material particular and not misleading; and
- (ii) is taken to repeat that warranty and representation every time the Manager gives Council one of those reports.

13.2 Inspection of books and accounts

- (a) Council may at any time after giving the Manager at least 5 days' notice, inspect the Manager's books and accounts recording or relating to the Revenue and expenditure (including Manager's Outgoings) of the Centre.
- (b) Council's notice must describe, in general terms, the books and accounts that Council wishes to inspect.
- (c) Following receipt of Council's notice, the Manager must:
 - (i) notify Council of the location of the books and accounts described in Council's notice;
 - (ii) ensure that on the date appointed for the inspection, those books and accounts are at the place that the Manager notifies Council;
 - (iii) let Council enter that place on the nominated date;
 - (iv) let Council inspect, copy and make reproductions of or take extracts from the books and accounts; and
 - (v) give any assistance, and provide any facilities, that Council reasonably requests in order to exercise its rights to inspect, copy and make reproductions of or take extracts from the books and account.
- (d) For the purposes of this Agreement, "**books and accounts**" includes:
 - (i) invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes and vouchers;
 - (ii) documents of prime entry;
 - (iii) working papers and other documents needed to explain the methods by which any document or report the Manager is required to give Council under this Agreement is, has been or will be made up;
 - (iv) returns, financial statements and other documents that the Manager is required to lodge, or has lodged under any law; and
 - (v) registers, records or information and documents (including those in electronic form).

14. REPORTING

14.1 Monthly reporting

The Manager must, within 10 Business Days after the end of each calendar month, provide to Council a report containing:

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- (a) the measures taken by the Manager during the month to achieve KPI's;
 - (b) the Manager's assessment of its performance against the KPI's during the month;
 - (c) the name and qualifications of the designated person under clause 5.2 at the end of the month;
 - (d) details of the records kept by the Manager under clause 4.7(c) during the month;
 - (e) daily totals, for each day during the month, of the number of adults and children entering swimming pool within the Centre;
 - (f) changes or new entries required to be made by the Manager in the records kept under clause 6.3(d) during the month;
 - (g) a statement, categorised in a way acceptable to Council, of Admission Fees, Hourly Fees and other Revenue received by the Manager during the month;
 - (h) a statement of the amount payable by the Manager to Council under clause 13.3 for the month;
 - (i) a statement categorised in a way acceptable to Council, of expenditure in relation to the management and operation of the Centre, including the Manager's Outgoings;
 - (j) details of repairs, maintenance and any other work carried out to or at the Centre during the month;
 - (k) details of any marketing and promotional activities carried out by the Manager for the Centre during the month;
 - (l) details of any programs and activities developed, planned or cancelled at the Centre during the month; and
 - (m) any other matter or information that Council notifies the Manager that it requires be included in the report from time to time.

15. DEFAULT AND TERMINATION

15.1 Remedy of breaches

- (a) If the Manager does not comply with any of the Manager's obligations under this Agreement, Council may give Manager a notice that tells the Manager:
 - (i) what obligation has not been complied with; and
 - (ii) what Council requires the Manager to do in order to remedy the non-compliance.
- (b) If the Manager does not comply with Council's notice within 7 days, or if the Manager does not comply with an obligation under this Agreement and Council reasonably considers that the non-compliance cannot be remedied, Council may:
 - (i) do anything reasonably necessary to remedy (or to remedy as far as possible) the Manager's non-compliance; and

- (ii) recover from the Manager, as a liquidated debt, the costs and expenses incurred by Council (including costs and expenses attributable to the use of Council's facilities and people) in doing so.

15.2 Termination

- (a) Council may terminate this Agreement if:
 - (i) the Manager does not comply with any of the Manager's obligations under this Agreement and does not comply with a notice given by Council under clause 15.1(a);
 - (ii) the Manager does not comply with an obligation under this Agreement and Council reasonably considers that the non-compliance cannot be remedied;
 - (iii) the Manager, being an individual, becomes bankrupt;
 - (iv) the Manager, being a corporation, becomes an Externally Administered Body Corporate;
 - (v) the Manager, being an incorporated association under the *Associations Incorporation Act 1981* (the "Act"):
 - (A) is wound up under the Act; or
 - (B) any resolution, proceeding or step is taken for the winding up of the Manager (regardless of whether it culminates in the winding up of the Manager); or
 - (C) has its incorporation under the Act cancelled,
 - (vi) all or any part of the Centre is compulsorily acquired or otherwise taken, given or dedicated for any other public purpose;
 - (vii) any form of tenure under which Council holds all or any part of the Centre is resumed, cancelled or forfeited, expires or otherwise comes to an end;
 - (viii) the Centre is destroyed; or
 - (ix) the Centre is damaged to the extent that Council considers the Centre to no longer be fully usable and Council decides not to fix the damage.
- (b) If Council exercises its right to terminate this Agreement, Council can still exercise any other right or power against the Manager arising from any conduct, act or omission that happened before the termination.

16. END DATE OBLIGATIONS

16.1 End of Term Condition

At the end of the Term the Manager must:

- (a) ensure that the Centre and the Council's Assets are in good repair (as that term is defined in clause 10.1(b) of this Agreement) and in a condition consistent with the Manager having complied with its obligations under this Agreement;

- (b) carry out any repairs and make good any damage to the Centre or Council's Assets which are the responsibility of the Manager under this Agreement;
- (c) ensure that all of the obligations specified as being the responsibility of the Manager in the Maintenance Schedule have been fully complied with;
- (d) if requested by Council, reinstate the Centre or the Council's Assets to their configuration, layout or condition (to the reasonable satisfaction of Council) prior to the Manager having made any approved alterations or additions in accordance with clause 10.5 of this Agreement;
- (e) if requested by Council, remove any of signs which have been installed by or at the request of the Manager, which are outside or inside the Centre, and repair any damage caused by their installation or removal to the reasonable satisfaction of Council; and
- (f) ensure that the Centre and the Council's Assets are clean and free from rubbish.

16.2 Manager's Property at end of Term

- (a) At the end of the Term the Manager must:
 - (i) remove all of the Manager's equipment and any third party equipment (which is plant, equipment and goods belonging to anyone other than Council and not Council's Assets); and
 - (ii) repair any damage caused by the installation or removal such equipment to the reasonable satisfaction of Council.
- (b) If the Manager does not remove any of the Manager's equipment or third party equipment in as required by this clause 16.2, then Council may (without liability to the Manager or any third party) treat the equipment as abandoned and Council may, at the expense of the Manager, remove, store and dispose of the equipment as Council sees fit.

17. GOOD NEIGHBOUR PROCESSES

17.1 Introduction

The Council and the Manager wish to work together to minimise inconvenience to, and complaints from, residents in the neighbourhood of the Centre who are affected by the Manager's use of the Centre ("**residents**"), including residents affected by noise coming from, or traffic connected with the Centre and to follow a procedure to resolve resident complaints in a way which satisfies the Manager, Council and the residents.

17.2 General Good Neighbour Processes

- (a) The Manager will use its best endeavours to work together with residents to minimise inconvenience to residents caused by the Manager's use of the Centre, and to develop close links between residents and the Manager.
- (b) The Manager will appoint an officer to represent the Manager in dealings with the residents (a "**Community Liaison Officer**") and will notify Council of the name and contact phone number of the Community Liaison Officer within 7 days of signing this Agreement. The Manager must keep this information current.

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- (c) The Manager agrees to comply with the processes outlined in this clause (the "**Good Neighbour Processes**"). Council may vary or replace the Good Neighbour Processes from time to time. All variations bind the Manager when notice of such variation is given to the Manager in writing by Council.
 - (d) Examples of the way in which the Manager will put Good Neighbour Processes into practice include:
 - (i) notifying residents in the neighbourhood of the Centre of the activities, especially of any major events to be held at the Centre;
 - (ii) appointing parking monitors to ensure that the Manager's employees, members, guests and invitees do not create undue noise when entering and leaving the Centre, or in neighbouring streets, and to ensure that resident access to driveways etc. is not obstructed;
 - (iii) circulating details of the Community Liaison Officer to residents and asking them to contact that person with any concerns or questions;
 - (iv) attending any seminars or meetings organised by Council about business activities in the community generally.

17.3 Complaint Handling Procedures

- (a) The Manager agrees to participate in any course of action proposed by Council under this clause.
- (b) If any person (the "**complainant**") makes a complaint to Council which arises from the Manager's use of Centre, Council will refer the complainant to the Community Liaison Officer and will record that a "**resident notification**" has been made in relation to the Manager.
- (c) Council will contact the complainant to find out the result of the referral.
- (d) If, in the reasonable opinion of Council, the complaint has not been resolved by the Community Liaison Officer within 14 days of the complainant contacting the Community Liaison Officer, Council will record that a "**resident dispute**" has arisen and may propose a method of solving the resident dispute to the complainant and the Manager.

(For example, the method chosen may involve:

- a meeting between the Manager, the complainant and Council;
 - mediation (including a programme provided by the Community Justice Programme of the Department of Justice and Attorney General);
 - referral of the resident dispute to the appropriate statutory authority (for example, in the case of a resident dispute in relation to lights used at the Centre, to the Community Health Branch of the Ipswich City Council); or
 - any other method determined by Council.)
- (e) The Manager agrees to be bound by the outcome of any method of solving the resident dispute chosen by Council.

- (f) If, in the reasonable opinion of Council, the method does not resolve the resident dispute, Council may require the Manager to participate in further attempts to resolve the resident dispute.
- (g) If, in the reasonable opinion of Council, the resident dispute is resolved, Council may require the Manager to enter into a legally enforceable agreement in a form satisfactory to the Manager.
- (h) Nothing in this clause affects any rights of Council under this Agreement to terminate the Agreement or take any other action.

17.4 Non-compliance with processes

The Manager acknowledges that the following will constitute a breach of this Agreement:

- (a) any breach of the Good Neighbour Processes;
- (b) three (3) resident notifications under the Good Neighbour Processes within any 12 month period;
- (c) three (3) resident disputes under the Good Neighbour Processes within any 12 month period.

18. DISPUTE RESOLUTION PROCEDURE

- (a) If the Manager or Council believes that a dispute (other than a resident dispute under the Good Neighbour Processes in clause 15) has arisen under this Agreement, that party may serve a notice upon the other party (a "**Dispute Notice**") requiring it to follow the procedure outlined in this clause and nominating a representative of that party with authority to settle the dispute.
- (b) Within 7 days of receiving the Dispute Notice, the party receiving the Dispute Notice must serve a notice on the other party (a "**Reply Notice**"), nominating a representative with authority to settle the dispute.
- (c) The representatives of each party will meet within 7 days of the receipt of the Reply Notice and will use their best endeavours to resolve the dispute.
- (d) If the dispute is not resolved to the satisfaction of both parties within 14 days of the receipt of the Reply Notice, the parties will refer the dispute to a Council Nominated Officer.
- (e) The Council Nominated Officer will decide the method of dispute resolution and the procedure to be adopted to resolve the dispute. For example, without limitation, the Council Nominated Officer may decide to:
 - (i) refer the dispute to arbitration under the *Commercial Arbitration Act 1990*;
 - (ii) refer the matter to the Community Justice Programme of the Department of Justice and Attorney General;
 - (iii) appoint an expert (whose decision will be final and binding on the parties) to decide the dispute; or
 - (iv) refer the dispute to mediation.

- (f) Each party will continue to perform its obligations under this document during any dispute.

19. GST

19.1 GST Exclusive Amounts

All amounts payable under or in connection with this document are exclusive of GST.

19.2 Payment of GST

- (a) A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the GST exclusive consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply ("**GST Amount**").
- (b) The recipient must pay the GST Amount to the supplier when the GST exclusive consideration or part of it is provided, except that the recipient need not pay the GST Amount unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

19.3 Reimbursements

Where a supplier incurs a cost or expense for which it may claim payment, reimbursement or indemnity from another party under or in connection with this document, the amount to be paid or credited to the supplier is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient as calculated under clause 19.2.

20. NOTICES

20.1 Service of Notice

A Notice must be:

- (a) in writing, in English and signed by the party giving it, or by their agent; and
- (b) delivered or sent by prepaid post or fax to the party's address specified in this document, or any other address notified by a party to the other party as its address for service.

20.2 Effective Service

- (a) A Notice given in accordance with clause 20.1 takes effect when received, or at a later time specified in it.
- (b) A Notice is taken to be received at the time specified below:
 - (i) if hand delivered – when delivered;
 - (ii) if sent by prepaid post – on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia);
 - (iii) if sent by fax – when the sender's fax system generates a message confirming successful transmission of the entire document.

- (c) However, if the time at which a Notice is taken to be received is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

20.3 Ineffective Service

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
- (b) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

21. MISCELLANEOUS

21.1 Special Conditions

The Special Conditions (if any) apply as terms of this Agreement. If there is any inconsistency between a Special Condition and a provision elsewhere in this Agreement, the Special Condition prevails to the extent of the inconsistency.

21.2 Assignment and other dealings

This Agreement is personal to the Manager and the Manager must not assign this Agreement or let or part with possession of any part of the Centre.

21.3 Council delegate

- (a) Council may:
 - (i) delegate any of its rights or powers under or relating to this Agreement to any person;
 - (ii) notify the Manager of the identity of the delegate; and
 - (iii) revoke the delegation and notify the Manager of the revocation.
- (b) Council's delegate may exercise any of Council's rights or powers under or relating to this Agreement.
- (c) Council may have more than one delegate.

21.4 Communication Protocols

- (a) The Manager must comply with any communication protocols that Council determines and notifies to the Manager from time to time.
- (b) Until and unless Council notifies the Manager otherwise, the communication protocol determined by Council is that the Manager must, in the first instance, refer any matter relating to the conduct, performance and monitoring of this Agreement to the employee of Council nominated by Council from time to time.
- (c) A communication protocol:

- (i) does not relieve or alter the Manager's obligations under this Agreement; but
- (ii) merely governs how the Manager is expected to communicate with Council about matters relating to the conduct, performance and monitoring of this Agreement.

21.5 Council's Consent

If this Agreement provides for or allows for the Council to give its consent or approval about any matter:

- (a) Council is not taken to have given its consent or approval unless it has given its consent or approval in writing by notice to the Manager;
- (b) Council may give or refuse to give its approval or consent in any way it considers appropriate (including by imposing conditions) (unless this Agreement expressly states otherwise); and
- (c) if Council gives its approval or consent conditionally, Council will not be taken to have given the approval or consent at all unless the Manager fulfils the conditions of the approval or consent.

21.6 No Warranty by Giving Consent

By giving its approval or consent, Council does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

21.7 Discretion in Exercising Rights

A party may exercise a right or remedy in any way it considers appropriate, unless this Agreement expressly states otherwise.

21.8 No Liability for Loss

A party is not liable to another party for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this document.

21.9 Remedies Cumulative

The rights and remedies provided in this document are in addition to other rights and remedies given by law independently of this document, except to the extent that those other rights and remedies are expressly excluded in this document.

21.10 Exclusion of Contrary Legislation

Any legislation that diminishes the obligation of a party, or adversely affects the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

21.11 Amendment

This document can only be amended, supplemented, novated or replaced by another document signed by the parties.

21.12 Waiver

A right under this document can only be waived by notice signed by the party or parties waiving the right. A party does not waive its rights under this document because it grants an extension or forbearance to any other party. A waiver of a right on one or more occasions does not operate as a waiver of that right if that right arises again. The exercise of a right does not prevent any further exercise of that right or of any other right. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

21.13 No Merger

None of the rights and obligations of a party under this document merge:

- (a) on completion of any transaction contemplated by this document;
- (b) with any security interest, guarantee, judgement or other right or remedy that a party may hold at any time; or
- (c) as a consequence of anything done under this document,

and those rights and obligations at all times remain in full force and effect.

21.14 Survival of Rights and Obligations

The following survive termination or expiration of this document:

- (a) Rights accrued to a party up to the date of termination or expiration of this document.
- (b) Indemnities and obligations of confidence given by a party under this document.

21.15 No Payment Required to Claim Indemnity

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this document.

21.16 Giving Effect to this Document

Each party agrees, at its own expense, to do anything (including ensuring that its employees and agents do anything) that any other party reasonably requires (such as obtaining consents, signing and producing documents) as may be necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by it.

21.17 Entire Agreement

This document embodies the entire agreement between the parties and supersedes all previous agreements, understandings, negotiations, warranties and representations on the subject matter of this document.

The parties acknowledge that they have not relied upon any representations or warranties in executing this document, except for those contained in this document.

21.18 Inconsistencies

If this document is inconsistent with any other agreement between the parties, this document prevails to the extent of the inconsistency.

21.19 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document.

21.20 Severability

If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.

21.21 Costs and Expenses

Unless this Agreement specifies otherwise, each party will bear its own costs and expenses in relation to the negotiation, preparation, execution, delivery, registration and completion of this document and any related documentation.

21.22 Governing Law

This document is governed by the law in force in Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts for any proceeding in connection with this document, and waives any right it may have to claim that those courts are an inconvenient forum.

21.23 Counterparts

This document may be executed in counterparts. A counterpart may be a copy of this document printed from a facsimile transmission. All counterparts together are taken to constitute one instrument. A copy of this document which has been executed by a party ("**Signatory**") may be relied upon by a party to the same extent as if it was an original of this document executed by the Signatory.

Schedule 1

Maintenance Schedule

Asset Description	Task Description	Maintenance Responsibility	Frequency
Building Structures	General cleaning requirements for the building and structures	Manager	As required
Building Structures	Inspection and audit	Council	-
Building Structures	General repair breakage or damage, except in cases of wilful damage, misuse or neglect by the Manager, the Manager is responsible	Council	-
Building Structures	Repair structural damage due to normal wear and tear	Council	-
Building Structures	Asset end of life replacement.	Council	-
Building Structures	Register and maintain asbestos and hazardous material report	Council	-
Pest Control(termites)	Pest control services termite control	Council	-
Pest Control(general)	General Pest control services	Manager	6 Monthly
Fire Services			
Fire safety installations and features	Inspect, service and maintain fire safety installations in accordance to Fire and Rescue Service Act 1990 and the Building Fire Safety Regulations 2008 requirements including but not limited to the Fire Board/Panel, Sprinklers and Smoke Alarms. Fire Brigade Call Outs resulting from false alarms exceeding one (1) per month will be oncharged to the Manager. Any unnecessary call outs as a result of the Manager business (such as damage to fire equipment, inappropriate use of the building etc.) may be oncharged to the Manager.	Council	-

Fire safety installations and features	Fire Safety Installations and Features including but not limited to Emergency Exit, Fire Extinguishers, Fire Blankets, Fire Hose Reels and Evacuation Diagrams and Plans. Any unnecessary call outs as a result of the Manager business (such as missing extinguishers, damaged exit lights etc.) may be on charged to the Manager	Council	-
Wardens and Fire Evacuation Training	Emergency Control Organisation and General Evacuation First Response Training	Manager	In accordance with legislative requirements
Electrical			
General Electrical Repairs and Maintenance	General Repairs and Maintenance	Council	-
External Lighting	Clean and relamp light fittings	Council	-
Internal Lighting	Clean and relamp light fittings	Manager	As required
Electrical Switchboards	Thermal scan/repair of switchboards	Council	-
Power poles and cables	Maintenance of all poles carrying light and power cable	Council	-
Electrical safety switch	Annual performance electrical leakage test	Council	-
Appliance electrical safety testing	Appliance electrical safety testing for portable appliances by qualified electrician	Manager	In accordance with legislative requirements
Pool Electrical Fittings	Inspection of Heat Pumps, Gas Heaters and Solar Panel fittings and fixtures	Manager	Daily
Pool Electrical Fittings	Servicing, maintenance and upgrade of Heat Pumps, Gas Heaters and Solar Fittings and Fixtures	Council	-

Mechanical Services			
Circulating Fans	Check operation of ceiling fan	Manager	As required
Lifts	Inspect, service and maintain lifts	Council	-
Automatic Doors	Service automatic door	Council	-
Cold & Freezer Rooms	Inspect and service freezer and cold-rooms plant and equipment	Manager	In accordance with Manufacturers Recommended specifications
A/C Unit	Inspect and service A/C unit includes filter cleaning	Council	-
Pool Equipment and Solar Heating	Inspections of pool equipment and solar heating	Manager	Daily
Pool Equipment and Solar Heating	Inspections/Repairs and Maintenance -service pool equipment and solar heating	Council	-
Windows and Doors			
Roller doors	Inspect and service roller doors	Council	-
Sliding windows	Inspect and service window rollers	Manager	As required
Sliding doors	Inspect and service door rollers	Manager	As required
Hollow core doors	Restore painted surfaces	Manager	As required
Windows and Doors	Inspect and service hardware in accordance with ICC key and locking system	Council	-
Windows and Doors	Glass Breakage except in cases of wilful damage, the Manager is responsible	Council	-

Landscaping			
Trees and Shrubs	Pruning of trees and shrubs	Manager	As required
Grassing and Turfing	General Landscape Maintenance	Manager	As required
Irrigation System Pumps	Inspect/ Service Pump	Manager	In accordance with Manufacturers Recommended specifications
Irrigation System Pumps	Replacement of Pumps	Council	-
Irrigation System	Inspect, Repair and Maintenance of Irrigation for Leaks (valves, etc).	Manager	In accordance with Manufacturers Recommended specifications
Irrigation System	Renewal of Irrigation System	Council	-
Exterior Works			
External Gate	Inspect gate and fittings	Manager	Daily
External Gate	Repairs and maintain gates and fittings	Council	-
Pool Gates	Inspect and service self-closing mechanism	Manager	Daily
Pool Gates	Repair self-closing mechanism	Council	-
External Fence	Inspect fence and fittings	Manager	Daily
External Fence	Repair and maintain fences and fittings	Council	-
Seats and Benches	Inspect, clean & ensure seat fitted securely. This applies to fixed seating only	Manager	Daily
Seats and Benches	Repair fixed seating	Council	-
Shade Structures	Inspect and identification of repairs and maintenance	Manager	Daily
Shade Structures	Cleaning, repairs and maintenance	Council	-

Concrete/ Pavement	Pressure clean surface	Manager	Daily
Hardstand Areas	Pressure clean surface	Manager	Daily
Roof	Clean and inspect and spot seal roof	Council	-
Gutter	Clean and inspect and spot seal gutter	Council	-
Downpipes	Restore protective coatings	Council	-
External taps	Service tapware washers, seats and O rings	Manager	As required .
Stormwater Drains	Inspect/Clean S/water Drains in pathways	Council	-
Water Storage Tank	Inspect, service and clean first flush system	Council	-
Business Signage	Restore, repairs and maintenance painted surfaces	Manager	As required, but no less than 5 yearly
External Wall	Clean surfaces	Manager	As required
External Wall	Exterior wall painting	Council	-
Tennis Court Surface	Maintain court surface to installer instructions	Manager	-
Tennis Court Surface	Upgrade court surface in accordance with asset lifecycle plan	Council	As required
Netball Court Surface	Maintain court surface to installer instructions	Council	As required
Pools	Test and Maintain water quality to installer instructions. This includes the provision of all equipment necessary to conduct the testing	Manager	In accordance with legislative requirements
Pools	Repairs and maintenance, except in cases of wilful damage or neglect caused by the Manager, the Manager is responsible	Council	-
Pools	Upgrade pool in accordance with asset lifecycle plan	Council	-

Hot Water System	Inspect, test and service pressure relief valve	Manager	As required
Hot Water System	Replace Hot Water System	Council	-
Regulatory Signage	Inspect, service and maintain regulatory signage	Council	-
Pool Tiles	Inspection and identification of repairs and maintenance	Manager	Daily
Pool Tiles	Repairs and maintenance, except in cases of wilful damage or neglect caused by the Manager, the Manager is responsible	Council	-
Pool Blankets	Supply, repair, maintenance and upgrade, except in cases of wilful damage, misuse or neglect by the Manager, the Manager is responsible	Council	-
Pool Blanket Rollers	Supply, repair, maintenance and upgrade, except in cases of wilful damage, misuse or neglect by the Manager, the Manager is responsible	Council	-
Lane Ropes	Supply, repair, maintenance and upgrade, except in cases of wilful damage, misuse or neglect by the Manager, the Manager is responsible	Council	-
Lane Rope Reels	Supply, repair, maintenance and upgrade, except in cases of wilful damage, misuse or neglect by the Manager, the Manager is responsible	Council	-
Pool Autovac	Initial supply by the Council. Service, maintenance, repair and replacement	Manager	As required
Manual Pool Vacuum	Initial supply by the Council. Service, maintenance, repair and replacement	Manager	As required
Two way radio communication	Supply, repair, maintenance and upgrade	Manager	As required

Rescue Boards	Supply, repair, maintenance and upgrade	Manager	As required
Rescue Tubes	Supply, repair, maintenance and upgrade	Manager	As required
Binoculars	Supply, repair, maintenance and upgrade	Manager	As required
Whistle	Supply, repair, maintenance and upgrade	Manager	As required
Spinal Boards	Supply, repair, maintenance and upgrade	Manager	As required
First Aid Kits	Supply, repair, maintenance and upgrade	Manager	As required
Automated external defibrillator	Supply, repair, maintenance and upgrade	Manager	As required
Air bag oxygen resuscitator	Supply, repair, maintenance and upgrade	Manager	As required
Oxygen for air bag oxygen resuscitator	Supply	Manager	As required
Stiff Neck Collars	Supply, repair, maintenance and upgrade	Manager	As required
Interior Finishes			
Internal ceilings and walls	Restore painted surfaces ceiling and walls except in cases of damage or misuse caused by the Manager	Manager	As required
Drinking Fountains	Inspect and service Zip Chillmaster	Council	-
Tap Water Heater	Inspect and service Zip Hydroboil	Council	-
Grease Traps	Pump out and maintain grease traps	Manager	In accordance with legislative requirements

Floor - Tile	Heavy duty scrub clean floor surfaces	Manager	As required but no less than annually
Floor - Vinyl	Inspect, repair and buff floor surfaces	Manager	As required
Floor - Vinyl	Replacement of vinyl, except in cases of wilful damage, misuse or neglect caused by the Manager, the Manager is responsible	Council	-
Floor - Carpet	Heavy duty deep pile special cleaning	Manager	As required
Floor - Carpet	Replacement of carpet, except in cases of wilful damage or neglect caused by the Manager, the Manager is responsible	Council	-
Kitchen Exhaust System	Inspect and service kitchen exhaust	Manager	As required
Kitchen Exhaust System	Heavy Duty Deep Clean kitchen exhaust	Manager	In accordance with manufacturers specifications and recommended requirements
General Internal Repairs	General repairs, except in cases of wilful damage, neglect or misuse caused by the Manager, the Manager is responsible	Council	-
Plumbing			
WC Toilet/cistern and Urinal	Inspect and service flushing mechanisms	Manager	As required
WC Toilet/cistern and Urinal	Clearing of blockages	Manager	As required
WC Toilet/cistern and Urinal	Repair and Maintenance, except in cases of wilful damage or neglect caused by the Manager, the Manager is responsible	Council	-

Tapware	Service Taps, rewasher, reseal, replace as necessary	Manager	As required
Temperature Control Valves	Inspect, service and clean thermostatic mixing & tempering valves	Council	-
Temperature Control Valves	Deep clean thermostatic mixing & tempering valves.	Council	-
Pipeworks	Service and maintain internal and external plumbing network	Manager	As required
Pipeworks	Repair and Replace internal and external plumbing pipeworks	Council	-
Security			
CCTV & Security Systems	Test and service Security Systems. Any editing or addition of alarm codes for the Manager, and any damage caused to the security system will be at the Manager's cost	Council	-
CCTV & Security Systems	CCTV Monitoring and Maintenance	Manager	Ongoing
CCTV & Security Systems	Security Patrols. Patrol Call Outs that result from False Alarms exceeding one (1) per month will be payable by the Manager	Council	-
CCTV & Security Systems	Access Cards, Keys, Locking Systems. Access Cards/Keys are the Manager responsibility however, if the access cards/keys are lost, damaged or stolen, replacements will be issued by the Council with the cost payable by the Manager	Council	-

Schedule 2

Key Performance Indicators (KPIs)

Objective	Performance Indicator	Minimum Performance Requirement
Facility marketing	Range of marketing/advertising tools used	Monthly report – 2 days after end of month
Training records	Staff development records	Results of staff training/career opportunities within aquatics to be supplied within 28 days of 31 March and 30 October
Incidences	All reportable incidents (when QAS/QPS are onsite) ASAP	Mandatory
Maintenance Operation Responsibility	Number of Defaults reported to Council or noted by Council on random quality inspections	Number of defects not rectified in a reasonable specified time: no more than 2 per annum
Council Equipment	Record Maintenance conducted under Manager Responsibilities	Maintenance not conducted no more than 2 per annum
Programs	The range and number of Programs offered at the Premises	Increased Programs or participation
Maintenance	Minor Maintenance to be undertaken by Manager	Number of repairs not rectified: no more than 3 per season having been given reasonable time to remedy
Attendance	Based on average annual attendances supplied by the Council for the subject premises or similar centre	A minimum 85% of that average annual attendance without request to provide written explanation on cause
Customer Satisfaction	Number of complaints received and number of complaints not dealt with to Council's reasonable satisfaction	Number of Complaints received: no more than 10 per year. Number of unresolved complaints: no more than 3 per year
Customer Satisfaction	Annual Customer Satisfaction Survey	Survey carried out as agreed with Council and results within agreed benchmarks to reasonable satisfaction of Council
Random Quality Inspections by Authorised Council Officers	A minimum of 10 inspections to be conducted per year	Manager must not receive 2 consecutive unsatisfactory assessments of the same criteria after random quality inspections are undertaken
Community Access	Opening Hours to meet Community needs and be similar to other comparable facilities	A minimum of 85 hours per week in summer season and minimum of 65 hours per week in winter season

Key Performance Indicators (KPIs) cont'd

Objective	Performance Indicator	Minimum Performance Requirement
Community Access	Fees and Charges schedule to be based benchmarking similar facilities within South East Queensland and no more than 5% variance from the medium range of the fees and charges at those other facilities	Proposed schedule submitted before 31 March annually
Administration Responsibilities	Attendance figures	Monthly report – 2 days after end of month
Administration Responsibilities	Water testing (as per Current Council Policy)	Monthly report – 2 days after end of month
Administration Responsibilities	Schedule of Works	Within 60 days of end of Financial Year
Administration Responsibilities	Financial Report showing Liquidity ratios to demonstrate ongoing viability	Within 60 days after end of Financial Year
Administration Responsibilities	Operational / Business Plan including Marketing Plan	Within 28 Days of 31 March provide a report that compares the performance against the plans
Administration Responsibilities	Insurance Certificate/ Licence/ Qualifications	Within 7 days of receipt of certificate/ licence/ qualifications or renewal to provide copy to Council
Administration Responsibilities	Workplace Health and Safety Plan	Supplied Annually

Schedule 3

Council's Assets - Inventory

Item	Quantity
Large Filter Tank	1
Pool Blanket Roller	1
P.A. Equipment	1
Ropes Assembled	5
Storreel	1
Aquatic Machinery Leichhardt Swimming Pool	1
Heat Exchanger - Part Of Gas Heaters	2
Vacuum Cleaner	1
Pool Blanket	1
Mushrooms - Within Pool	3
Water Cannons - Within Pool	2
Air Blower - Within Pool	1
Lazy River - Within Pool	1
Pool Vacuum Auto	1
Thermal Blanket	1
Solar Collector System	1
Gas Heaters	2
Filtration System	1
Lane Ropes	1
Leichhardt Pool Kiosk	1
Change Room	1
Demountable Bldg First Aid	1
25x13m Pool	1
Wading Pool - Fountain	1
Chlorine System	1
Pool Cleaner	1
Submarine Play unit with Staircase and Tunnel	1
4 Way Rocker	1

Surfboard Rocker	1
Fish Rocker	1

Execution

Executed as an agreement.

SIGNED for **IPSWICH CITY COUNCIL** by
its duly authorised officer, in the presence
of:

JFL
Signature of witness

THERESE FLYNN
Name of witness (BLOCK LETTERS)

[Signature]
Signature of officer

GARY RUSSELL KELLAR
Name of officer (BLOCK LETTERS)

ACTING CHIEF EXECUTIVE OFFICER
Office held (BLOCK LETTERS)

16.4.18
Date signed

EXECUTED by **AUSTRALIAN CRAWL**
(GOODNA) PTY LTD A.C.N. 120 208 255:

[Signature]
Signature of director

JUSTIN LEMBOLD
Name (BLOCK LETTERS)

[Signature]
Signature of director/secretary/
sole director/sole director & secretary*
*delete whichever is not applicable

JUSTIN LEMBOLD
Name (BLOCK LETTERS)

26/3/18
Date signed

Annexure A

Special Conditions

1. AVAILABILITY OF CENTRE TO COUNCIL

- (a) Council may notify the Manager that Council requires the Manager to make the Centre (or any part of the Centre) available to Council (free of charge) for an event that Council wishes to hold or allow to be held at the Centre.
- (b) Council may exercise its rights under this special condition no more than [twice] in each calendar year and for no more than 2 days in each calendar year.
- (c) If Council exercises its rights under this special condition, the Manager must make the Centre (or part of the Centre) available (free of charge) on the date or dates designated by Council for the event.
- (d) The Manager is not released from its obligations under this Agreement on the designated date or dates, unless Council specifically specifies or agrees in writing.
- (e) A reference in this special condition to making the Centre available 'free of charge' does not apply to any kiosk or sporting goods outlet in the Centre.

2. AVAILABILITY OF CENTRE TO RESIDENT SWIM CLUB

- (a) The Manager must allow Ipswich Swimming Clubs (**Swim Clubs**) and all members and guests of Swim Clubs to use the Centre during the Designated Hours.
- (b) The Manager must not allow people who are not members or guests of the Swim Clubs to use the swimming pool(s) in the Centre during the Designated Hours unless the Swim Clubs agree.
- (c) The Manager's obligations under this Agreement continue during the Designated Hours.
- (d) Nothing in this special condition prevents the Manager from charging the Swim Clubs, or members or guests of the Swim Clubs, Admission Fees or Hourly Fees if the Manager could otherwise charge them under this Agreement.
- (e) The "**Designated Hours**" are:
 - (i) the hours that are agreed between the Manager and the Resident Swim Club from time to time; or
 - (ii) if Council specifies a period not exceeding half a day in each week that will be the Designated Hours (for example, between specified hours on a set day in every week) by notice to the Manager – each of those specified periods.

3. USE OF CENTRE BY SWIMMING CLUBS, SCHOOLS, ETC.

- (a) The Manager:
 - (i) may, with the approval of Council; and

-
- (ii) must, if directed to do so by Council,
allow swimming clubs, schools and other bodies approved or specified by Council from time to time (all called "**swimming clubs**") to access and use the Centre, and to access and use the swimming pool(s) in the Centre, to the exclusion of members of the general public;
 - (iii) for club swims, carnivals and similar events; and
 - (iv) for the length of time and on the day or days and on the conditions approved by or directed by Council.
- (b) Nothing in this special condition prevents the Manager from charging the swimming clubs Admission Fees or Hourly Fees if the Manager could otherwise charge them under this Agreement.

4. CAPITAL WORKS

4.1 Manager Capital Works

- (a) The Manager may undertake the Manager Capital Works at the Centre:
 - (i) in accordance with and without breaching the requirements of clause 10.5(b) of this Agreement;
 - (ii) after obtaining Council's approval to the scope of works and the manner of undertaking the Manager Capital Works; and
 - (iii) in accordance with any conditions imposed by Council when giving that approval.
- (b) The Manager will be permitted to remove or deconstruct the Manager Capital Works at the end of the Term.
- (c) Ownership of the Manager Capital Works shall remain with the Manager during the Term.
- (d) If the Manager does remove or deconstruct the Manager Capital Works at the end of the Term, it must repair any damage caused by such removal or deconstruction, to the reasonable satisfaction of Council.
- (e) If the Manager does not remove or deconstruct the Manager Capital Works at the end of the Term, Council may (without any liability to the Manager) treat the Manager Capital Works as abandoned and may, at Council's election, treat the ownership of the Manager Capital Works as having vested in Council and/or remove, store and dispose of the Manager Capital Works as the Council sees fit.
- (f) "**Manager Capital Works**" means capital improvements made or to be made to the Centre by the Manager during the Term including but not limited to:

Manager Capital Works	Estimated Cost
Office Fit Out	\$10,000.00
Pool Furniture Fit Out	\$10,000.00
Miscellaneous	\$5,000.00
Total	\$25,000.00

4.2 Agreed Capital Works

- (a) The Manager must submit a written proposal (including a scope of works, draft design brief, draft plans and specifications, draft schedule of finishes, proposed time line and indicative costings) to Council outlining the Manager's proposed capital improvements to the Centre (other than the Manager Capital Works) during the Term (the "**Capital Works Proposal**") on or before 1 June 2018.
- (b) Council will review the Manager's Capital Works Proposal and provide a response on the proposal to the Manager within 30 days of receipt of the proposal.
- (c) The parties agree to collaborate in good faith in relation to the proposed capital improvements and the Capital Works Proposal. The Manager acknowledges that Council has a masterplan for the Centre and may be desirous to undertaking additional or other capital improvements to the Centre.
- (d) Council may (acting reasonably):
 - (i) approve the Manager's Capital Works Proposal;
 - (ii) require amendments to the Manager's Capital Works Proposal;
 - (iii) impose conditions on any approval of the Manager's Capital Works Proposal (including on any amended Capital Works Proposal); or
 - (iv) not approve the Manager's Capital Works Proposal.
- (e) If Council approves the Manager's Capital Works Proposal (including any amended Capital Works Proposal):
 - (i) the Manager's proposed capital improvements (as per the Capital Works Proposal) will be the "**Agreed Capital Works**" for the purposes of this special condition;
 - (ii) the Manager must undertake the Agreed Capital Works at the Centre during the Term:
 - (A) to a minimum guaranteed spend amount of \$100,000 (exclusive of GST). In this regard, the Manager must provide to Council, as and when requested, evidence of the expenditure of funds, including for example, copies of invoices and receipts for payment;
 - (B) in accordance with and without breaching the requirements of clause 10.5(b) of this Agreement; and

-
- (C) in accordance with any conditions imposed by Council when giving that approval.
 - (iii) the ownership of the Agreed Capital Works shall be with the Manager during the Term, but shall vest in Council on termination of this Agreement. The Manager must do all things reasonably possible to ensure that Council obtains the benefit of any warranties relating to the Agreed Capital Works; and
 - (iv) the Manager will not be permitted to remove or deconstruct the Agreed Capital Works at the end of the Term. For the purpose of clause 16 of this Agreement, the Agreed Capital Works will form part of the Centre and/or the Council's Assets at the end of the Term.
- (f) If:
- (i) Council does not approve the Manager's Capital Works Proposal; or
 - (ii) Council approves the Manager's Capital Works Proposal but the Manager does not carry out and complete the Agreed Capital Works in the manner required by this special condition by 1 April 2021,
- the Manager must pay to Council the sum of \$100,000 plus GST within 30 days of receipt of a valid tax invoice from Council.
- (g) Nothing in this special condition prohibits Council from undertaking its own capital improvements to the Centre and/or utilising the funds received from the Manager in accordance with special condition 4.2(f) towards its capital improvements to the Centre.

4.3 Disputes

If a dispute arises between the parties in relation to the operation of this special condition 4, such dispute shall be managed in accordance with clause 18 of this Agreement.

5. TRUSTS

If the Manager is at any time acting in the capacity of trustee of any trust (**the Trust**) then whether or not Council may have notice of the Trust the Manager covenants with Council as follows:

- (a) the Manager is the sole trustee of the Trust;
- (b) this Agreement extends to all rights of indemnity which the Manager has against the Trust;
- (c) the Manager has power and authority to enter into this Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Manager against the Trust and the Manager will not breach that right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (d) the Manager will be and at all times remain personally liable to Council for the due performance fulfilment and observance of the obligations in this Agreement;
- (e) the Manager will not without the consent in writing of Council allow any of the

following events to happen:

- (i) the removal replacement or retirement of the Manager as sole trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust;
 - (iv) any resettlement of the trust property.
- (f) It will be an event of default under this Agreement if the Manager is guilty of any breach of trust in respect of the Trust or ceases to be the sole trustee of the Trust.

6. NOT USED

7. LICENSING

7.1 Right to Grant Licence

The Manager may, subject to first obtaining the written consent of Council, grant to third parties a non-exclusive licence to use and occupy part or parts of the Centre on terms satisfactory to Council, and otherwise in accordance with this provision.

7.2 Council's Consent

Council's consent to a licence arrangement contemplated by this provision (a **Licence**) will not be unreasonably withheld or delayed if the following conditions are satisfied:

- (a) the Manager gives to Council reasonable prior written notice of the Manager's desire to grant a Licence, details of the nature of the proposed Licence and the name of the proposed licensee;
- (b) the Manager gives to Council upon demand such further information financial reports or other material as Council may reasonably require in respect of the proposed Licence and proposed licensee;
- (c) the proposed licensee is a respectable and financially responsible person who has the ability to meet all relevant obligations of the Manager contained in this Agreement (having regard to the nature and extent of the proposed Licence);
- (d) the use to which it is proposed that the licenced area will be put is not inconsistent with the nature and character of the Centre, and will not detract from the good management of the Centre or the standard or quality of the facilities offered at the Centre;
- (e) the Manager is not in breach of this Agreement;
- (f) if required by Council, the proposed licensee agrees to enter into a covenant with Council that the proposed licensee will observe and perform all relevant obligations conditions and restrictions (having regard to the nature and extent of the proposed Licence) contained in this Agreement on the part of the Manager to be observed and performed;
- (g) the Manager pays Councils reasonable legal and other costs incurred in

connection with considering the proposed Licence (whether or not Council's consent is granted and whether or not the proposed Licence proceeds) including the cost of enquiries made by or on behalf of Council regarding the solvency fitness and suitability of the proposed licensee;

- (h) if the proposed licensee is a limited liability company, one (1) or more directors or shareholders of the proposed licensee as may be reasonably required by Council will provide personal guarantees in the form reasonably required by Council and to the effect that:
 - (i) the proposed licensee will observe and perform all relevant obligations conditions and restrictions (having regard to the nature and extent of the proposed Licence) contained in this Agreement on the part of the Manager to be observed and performed; and
 - (ii) they will indemnify Council against all loss damages costs and expenses arising by reason of any default by the proposed licensee;

7.3 Licence Terms

Every permitted Licence must be granted at a licence fee equal to the then current market licence fee value of the area being licensed (the **Licensed Area**) and will contain covenants:

- (a) for the review of the licence fee reserved on an annual basis;
- (b) prohibiting the licensee from doing or allowing any act or thing inconsistent with or in breach of this Agreement; and
- (c) not to assign or sub-licence the Licensed Area.

7.4 Performance Management, Financial Management and Reporting

Without limiting special condition 7.3, the Manager must ensure that every permitted Licence contains terms and obligations to be performed on the part of the licensee that mirror (as applicable, having regard to the nature and extent of the Licence) those covenants contained in this Agreement relating to:

- (a) performance management (as contained in clause 12 of this Agreement);
- (b) financial management (as contained in clause 13 of this Agreement); and
- (c) reporting (as contained in clause 14 of this Agreement),

so as to enable the Manager to comply with its obligations under those provisions of this Agreement and to include, where applicable, all relevant information in respect of the Licence (including income generated by the licensee, and licence fees or other amounts payable by the licensee to the Manager) in all records and reports the Manager is required to keep, maintain and provide to Council under the terms of this Agreement.

7.5 Licence Fees as Revenue

For avoidance of doubt, all amounts received by the Manager from the licensee under any permitted Licence will be considered Revenue of the Centre for the purposes of this Agreement, and in particular, under clause 13 of this Agreement.

8. BANK GUARANTEE

8.1 Application

This Special Condition 8 applies unless the Manager provides Council with a Security Bond in accordance with Special Condition 9.

8.2 Provision of Guarantee and Review

The Manager must:

- (a) on or before executing this Agreement arrange for the issue of an unconditional Australian bank guarantee in favour of Council, on terms and issued by a bank acceptable to Council, for the amount of \$5,000.00 (**Bank Guarantee**) to secure performance by the Manager of its obligations under this Agreement;
- (b) ensure that any Bank Guarantee is kept current and enforceable and that it has no expiry date; and
- (c) if Council is paid an amount under the Bank Guarantee following a demand provide Council with a replacement or additional bank guarantee for the amount paid out.

8.3 Recourse to Bank Guarantee

If the Manager does not comply with any of its obligations under this Agreement Council may call on the Bank Guarantee to the extent of the Manager's default.

8.4 Transfer by Council

- (d) If Council sells or transfers the Centre, it may:
 - (i) assign the Bank Guarantee to the transferee; or
 - (ii) require the Manager to provide a replacement Bank Guarantee in favour of the transferee.
- (e) If the Manager does not comply with a request to provide a replacement Bank Guarantee within 14 days, Council may present the Bank Guarantee and deliver the proceeds to the transferee to hold as a security deposit until the Manager provides a Bank Guarantee to the transferee and on doing so, Council will be discharged from any legal responsibility to the Manager or any other person in relation to the Bank Guarantee.

9. SECURITY BOND

9.1 Application

This Special Condition 9 applies unless the Manager provides Council with a Bank Guarantee in accordance with Special Condition 8.

9.2 Amount

The Manager must on or before executing this Agreement pay a security bond to Council in the amount of \$5,000.00 (**Security Bond**) to be held by Council as security for the performance of the Manager's obligations under this Agreement.

9.3 Holding of the Security Bond

The Security Bond will, at Council's discretion, be held by Council or in Council's solicitor's or managing agent's trust account.

9.4 Charging of the Security Bond

The Manager:

- (a) charges of Security Bond in favour of Council for the Term with the performance by the Manager of all its obligations under this Agreement;
- (b) authorises Council to make withdrawals from the Security Bond; and
- (c) must sign any documents that Council requires to enable Council to be paid any part of the Security Bond.

9.5 Application of the Security Bond

Council may apply the Security Bond towards the payment of any money payable by the Manager to Council under this Agreement.

9.6 Maintenance of Security Bond

If Council applies the Security Bond under this special condition, the Manager must within 14 days of being so requested pay any deficiency so that the Security Bond is reinstated to its full amount.

9.7 Not to Prejudice Other Rights

The application of the Security Bond by Council does not prejudice Council's other rights under this Agreement or by law. Council's failure to apply the Security Bond does not constitute a waiver.

9.8 Bank Fees

Council is not legally responsible for any bank fees or charges GST or other tax on any interest bearing account in which the Security Bond is deposited. Any bank fees or charges GST or other taxes will be deducted from the Security Bond. If requested by Council, the Manager will provide its tax file number for disclosure to the relevant bank. Nothing in this special condition obliges Council to invest the Security Bond in an interest bearing account.

9.9 Payment of Security Bond

Council must pay the balance of the Security Bond to the Manager (including any interest) within one (1) month after the later of the following:

- (a) if there is a dispute between Council and Manager pertaining to this Agreement when this Agreement ends – the date when that dispute is resolved or determined; or
- (b) otherwise – when all the Manager's obligations under this Agreement have been fulfilled.

9.10 Assignment of Security Bond

If Council sells or transfers the Centre, it may pay the Security Bond or assign its interest in it to the buyer or transferee and on doing so, Council will be discharged from any legal responsibility to the Manager or any other person in relation to the Security Bond.

10. GUARANTEE AND INDEMNITY

10.1 Application

If the Manager is a corporation as defined in the *Corporations Act 2001*, the Manager must at the same time as execution of this Agreement, arrange for the execution of the guarantee and indemnity contained in this Agreement by its directors and principal shareholders, as reasonably required by Council.

10.2 Guarantee and Indemnity

In consideration of Council entering into this Agreement with the Manager, the Guarantor covenants and agrees with Council that:

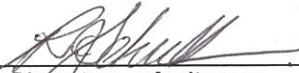
- (a) it will be legally responsible jointly and separately with the Manager for the due performance by the Manager of all the obligations terms and conditions of this Agreement on the part of the Manager to be performed;
- (b) the Guarantor indemnifies Council against all losses damages costs and expenses which Council may incur from any breach or non observance of this Agreement by the Manager;
- (c) the legal responsibility of the Guarantor is not affected by:
 - (i) Council exercising any rights under this Agreement;
 - (ii) Council terminating this Agreement;
 - (iii) the Manager that is a corporation being wound up or dissolved; .
 - (iv) the Manager who is a natural person being declared bankrupt;
 - (v) a transfer of the Manager's interest in this Agreement;
 - (vi) a variation of this Agreement;
 - (vii) any failure by Council to exercise its rights or any delay in doing so;
- (d) the Guarantor is treated as a primary debtor and contractor together and separately with the Manager;
- (e) this guarantee and indemnity does not depend upon the enforceability of the obligations and agreements of any other person and remains binding even if another person does not sign this Agreement or this guarantee and indemnity;
- (f) if the Manager enters into liquidation (or being a natural person enters into bankruptcy) and the liquidator or trustee in bankruptcy disclaims this Agreement the Guarantor must accept from Council an agreement for a period equal to the remaining Term of this Agreement, the agreement to contain the same conditions

as are in this Agreement;

- (g) notices to be given to the Guarantor may be signed by the solicitors for Council or any officer of Council and may be given by post at the Guarantor's last known address;
- (h) if any part of this guarantee and indemnity is unenforceable that will not affect the enforceability of any other part of this guarantee and indemnity;
- (i) if the Guarantor is more than one person the liabilities of each of those persons are joint and separate;
- (j) this guarantee and indemnity takes effect immediately upon its signing and continues to be of full effect. References to **this Agreement** include any agreement arising upon signing or acceptance by the Manager of the document to which this guarantee and indemnity is attached or forms part;
- (k) if the Licensor transfers the Centre or otherwise transfers Council's rights under this Agreement Council's rights under this guarantee and indemnity will be treated as transferred to any future owner of the Centre or other transferee.

Executed by the Guarantor as a deed.

SIGNED SEALED AND DELIVERED by
JUSTIN WILLIAM LEMBERG, in the
presence of:



Signature of witness

ROSLYN SCHULKINS

Name of witness (BLOCK LETTERS)

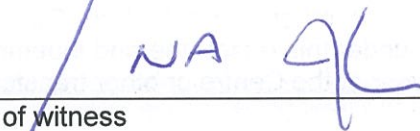


Signature of party

28.3.18

Date signed

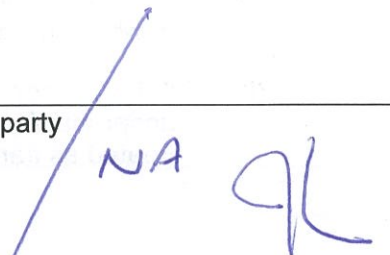
SIGNED SEALED AND DELIVERED by
WILLIAM HARRY LEMBERG, in the
presence of:



Signature of witness

NA QL

Name of witness (BLOCK LETTERS)



Signature of party

NA QL

Date signed

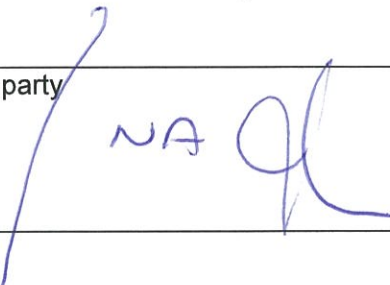
SIGNED SEALED AND DELIVERED by
ELIZABETH ANN LEMBERG, in the
presence of:



Signature of witness

NA QL

Name of witness (BLOCK LETTERS)



Signature of party

NA QL

Date signed