

Agreement for Lease

in relation to part of 60-74 The
Crescent, Cheltenham NSW 2119

The Cheltenham Recreation Club Ltd ACN 000 005 890

Sydney Real Tennis Club Inc NSW Association Number: INC 9895108

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Dated 24 October 2019

Parties

The Cheltenham Recreation Club Ltd ACN 000 005 890

Address: 60-74 The Crescent, Cheltenham in the State of New South Wales

Email: cheltenhamrc@outlook.com

Attention: Bain Shenstone
(the Landlord)

Sydney Real Tennis Club Inc NSW Association Number: INC 9895108 ABN 93 435 792 677

Address: 71 Henrietta Street, Waverly in the State of New South Wales

Email: christopher.cooper1963@gmail.com

Attention: Christopher Cooper
(the Tenant)

Background

- A. The Landlord is the registered owner of the Land.
- B. The Landlord and the Tenant have agreed to facilitate the construction of a real tennis court on a part of the Land.
- C. Subject to obtaining the Tenant's Approvals, on terms and conditions satisfactory to the Tenant, the Tenant has agreed to cause the Works to be carried out on a part of the Land in accordance with the Tenant's Approvals.
- D. The Landlord has agreed to grant, and the Tenant has agreed to accept, the Leases subject to the terms contained in this Agreement.

1. Definition and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms (both singular and plural) will have the respective meanings assigned to them:

Term:	Definition:
Agreement	means this deed and all Schedules and Annexures hereto, as amended from time to time.
Authority	means any governmental, statutory, public, local government or other authority or body having jurisdiction over any part of the Land or relating to its use.
Balance of the land	means the area of the Land apart from the Premises shown as the "Proposed New Tennis Court Building" on the Survey Plan.
Bank Guarantee	means an unconditional and irrevocable undertaking to pay by a bank trading in the State of New South Wales drawn in favour of the Landlord (having an expiry date not earlier than 6 Months after the Sunset Date) in the form acceptable to the Landlord.

Builder	means such builder, licenced in New South Wales, with which the Tenant, may from time to time engage for the carrying out of the Tenant's Works.
Building Documents	means the plans, drawings, outline specifications and other documents relating to the Works.
Business Day	means a day other than a Saturday, Sunday or public holiday or bank holiday in the City of Sydney.
Claims	includes a claim for any monies or damages in relation to any, or arising out of any, or pursuant to any, claim, notice, demand, action, proceeding, litigation, investigation or judgment, loss, cost, expense or liability however arising whether present or future.
Club	means the Cheltenham Recreation Club Ltd.
Commencement Date	means fifteen (15) Business Days after the date the Tenant gives the Landlord a notice of Practical Completion.
Consultants	means all consultants including: <ul style="list-style-type: none"> (a) the architect; (b) the engineer; (c) the licensed surveyor, and (d) others, engaged by the Tenant to prepare the Building Documents, the application for the Tenant's Approvals and/or supervise and/or manage and/or carry out the Tenant's Works.
Council	means the Hornsby Shire Council.
Development Approval	means a Development Consent from the Council for the Tenant's Works.
Development Consent	has the meaning set out in Section 1.4 of the EP&A Act.
Dispute	means a dispute or difference between the parties under or in relation to the Agreement.
EP&A Act	means the Environmental Planning and Assessment Act 1979 (NSW).
Government Agency	means: <ul style="list-style-type: none"> (a) any government, or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, Authority, tribunal, agency or entity; and (b) any professional body, or self-regulatory organisation, that performs statutory functions.
Land	means the land known as 60-74 The Crescent, Cheltenham NSW 2119.

Landlord	includes the successors in title of the Landlord to the Land and any other person who is at any time entitled to the Land or the reversion immediately expectant on the term agreed to be granted by this Agreement.
Leases	<p>means six (6) consecutive leases of the Premises comprising the First Lease, the Second Lease, the Third Lease, the Fourth Lease, the Fifth Lease and the Sixth Lease:</p> <p>(a) each for a term of five (5) years:</p> <p>(i) the first of which commences on the Commencement Date and ends on the day before the fifth anniversary of the Commencement Date ("First Lease");</p> <p>(ii) the second of which commences on the fifth anniversary of the Commencement Date and ends the day before the tenth anniversary of the Commencement Date ("Second Lease");</p> <p>(iii) the third of which commences on the tenth anniversary of the Commencement Date and ends the day before the fifteenth anniversary of the Commencement Date ("Third Lease");</p> <p>(iv) the fourth of which commences on the fifteenth anniversary of the Commencement Dated and ends the day before the twentieth anniversary of the Commencement Date ("Fourth Lease");</p> <p>(v) the fifth of which commences on the twentieth anniversary of the Commencement Date and ends the day before the twenty fifth anniversary of the Commencement Date ("Fifth Lease"); and</p> <p>(vi) the sixth of which commences on the twenty fifth anniversary of the Commencement Date and ends the day before the thirtieth anniversary of the Commencement Date ("Sixth Lease").</p> <p>(b) such leases to be in the form of the draft lease contained in Schedule 3 except that:</p> <p>(i) clause 2.3 of the draft lease shall only be included in the Sixth Lease; and</p> <p>(ii) clause 16 of the Lease shall not be included in the First Lease.</p>
Month	means a calendar month.
Occupation Certificate	means a certificate issued under Division 6.3 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW), issued by the Principal Certifying Authority in relation to the lawful use of the Premises for the Permitted Use.
Permitted Use	<p>means:</p> <p>(a) the playing of the sport of real tennis and activities associated with the playing of the sport of real tennis; and</p>

	(b) enterprises events and functions as approved by the Landlord.
Plans	means the plans of the Tenant's Works attached in Schedule 1, subject to any amendments pursuant to clause 4.3.
Plant	means all plant, machinery and equipment installed, or to be installed, by the Tenant in the Premises, in the course of the Works.
Practical Completion	means the later of: <ul style="list-style-type: none"> (a) substantial completion of the Tenant's Works as notified by the Tenant to the Landlord in writing; and (b) the issue and service on the Landlord of an Occupation Certificate.
Premises	means: <ul style="list-style-type: none"> (a) the premises shown as the "Proposed New Tennis Court Building" on the Survey Plan; and (b) such of the Tenant's Works, as from time to time, may have been carried out thereon.
Principal Certifying Authority	means a certifier accredited by the Australian Institute of Building Surveyors to issue an Occupation Certificate.
Restricted Action	means any objection, requisition, claim for compensation, withholding any money or exercising any right to terminate this Agreement
Survey Plan	means the plan which comprises Schedule 2.
Sunset Date	means 7 years from the date of this Agreement.
Tenant	means Sydney Real Tennis Club Inc (NSW Association Number: INC 9895108) and its successors but does not include any assignee of that association.
Tenant's Approvals	means all (if any) approvals, consents, permissions and licences of any Government Agency, including any relevant insurances and the Development Approval which may from time to time be necessary to enable the Tenant lawfully to commence, and to carry out, the Tenant's Works.
Tenant's Works or Works	means the design, construction and erection of a real tennis court facility and associated works which are to be carried out and completed by or on behalf of the Tenant on the Premises substantially in accordance with the Plans and the Tenant's Approvals.
Works Sunset Date	means 5 years from the date of this Agreement.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) Words importing the singular number include the plural and vice versa. Any gender includes the other genders. Any reference to a person, includes a reference to a corporation, firm, Authority, or Government Agency.
- (b) A reference to legislation, or to a legislative provision, includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision, and any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
- (c) The clause headings in this Agreement are for reference purposes only and do not in any way influence or affect the meaning of this Agreement.
- (d) A reference to any covenant, agreement, licence, document or other instrument (including this Agreement), includes a reference to that covenant, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
- (e) A reference to a party to this Agreement, or to any other covenant, agreement, licence, document or other instrument required under this Agreement, or for the purposes of this Agreement, includes that party's successors and permitted assigns (save in respect of the Tenant, references to which expressly exclude any assignees of the Tenant).
- (f) Where under or pursuant to this Agreement, or anything done under this Agreement, the day on or by which any act, matter or thing is to be done is not a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (g) Where under or pursuant to this Agreement, or anything done under this Agreement, the day on or by which any act, matter or thing is to be done is the 29th, 30th or 31st day of any Month in which such a day does not occur, such act, matter or thing must be done on the last day of that Month.
- (h) References to Parts, clauses and Schedules, are references to Parts and clause of, and Schedules to, this Agreement.
- (i) A reference to bankruptcy or liquidation includes winding up, liquidation, provisional liquidation, dissolution, becoming insolvent, the appointment of a receiver or receiver and manager, under administration or external control and circumstances and events giving rise to, or contributing to, any such condition or matters.
- (j) The expression \$ or **dollars** means the lawful currency for the time being of the Commonwealth of Australia.

2. Condition Precedent and Development Approval

2.1 Condition Precedent

The operation of Clauses 4, 5 and 6 (but excluding clause 4.4) of this Agreement and the grant of the Leases are conditional on and subject to the Tenant, with the assistance of the Landlord (as required), obtaining or procuring Development Approval (subject to reasonable conditions in the opinion of the Tenant) for the Tenant's Works ('**Condition Precedent**'), on or before 31 December 2024 ('**Approval Date**'). This clause is subject to clause 2.5.

2.2 Obligations of the Tenant if the Condition Precedent is satisfied

The Tenant must use its best endeavours to satisfy the Condition Precedent prior to the Approval Date including:

- (a) promptly notifying the Landlord in writing if it becomes aware that a condition has become incapable of being satisfied; and
- (b) notifying the Landlord in writing within 10 Business Days of the satisfaction of the Condition Precedent.

For the avoidance of doubt, nothing in this clause requires the Tenant to commence any proceedings or appeal against any Authority responsible for granting the Development Approval.

2.3 Extension to the Approval Date

- (a) If the Development Approval is not obtained by the Approval Date, the Approval Date may be extended by the Tenant by a period of up to 182 days by the giving of written notice to the Landlord if the cause of the delay is beyond the control of the Tenant.
- (b) Without limiting the generality of clause 2.3(a), the following events are delaying factors for the purpose of this clause:
 - (i) delay by any reasonable Authority giving any necessary approval or consent;
 - (ii) non-compliance by the Landlord in relation to any notice or request issued by an Authority in respect of the Tenant's Approvals or the Tenant's Works;
 - (ii) any industrial or civil dispute or action preventing the Tenant from obtaining the Tenant's Approvals;
 - (iii) the Landlord or any of its members or stakeholders failing to provide the Tenant, in reasonable time, any instructions or information or consent that the Tenant has requested from the Landlord in writing and is necessary for the Tenant's Approvals; and
 - (iv) any other event or matter which is reasonably beyond the control of the Tenant and the Tenant could not have prevented or avoided,

(Delaying Factors).

- (c) Within 15 Business Days of a Delaying Factor arising, the Tenant must notify the Landlord of the Delaying Factor, its effect on obtaining the Development Approval and the period in which the Approval Date will be extended.

2.4 Termination

If the Development Approval:

- (a) is not issued on or before the Approval Date, (or any extension to the Approval Date pursuant to clause 2.3 of this Agreement); or
- (b) is issued subject to conditions which in the Tenant's opinion are unreasonable,

then either party may terminate this Agreement by notice in writing to the other party and the parties are released from their obligations under this Agreement and the Lease and neither party may make any claim for damages against the other (other than any antecedent breach).

2.5 Limitation on the obligations of the Landlord

- (a) Nothing in clause 2.1 will oblige the Landlord to expend any monies or incur any expenses unless the Tenant pays to the Landlord the amount of any such expenditure or expense before it is incurred or met by the Landlord.
- (b) Nothing in clause 2.1 or otherwise in this Agreement shall oblige the Landlord to comply with any notice or request issued by an Authority in respect of the Tenant's Approvals or the Tenant's Works unless the Tenant meets any expenses incurred in the Landlord doing so.
- (c) Where any Development Consent which is issued upon the application of the Tenant contains conditions which require any works or activities on the Balance of the Land which, in the reasonable opinion of the Landlord, will in any way prejudice or adversely affect the appearance, use, enjoyment or amenity of the Balance of the Land, a Development Approval will be deemed not to have issued or obtained.

3. Tenant's Approvals

3.1 Tenant to use reasonable endeavours to obtain the Tenant's Approvals

The Tenant will, at its own cost, use its best endeavours to obtain the Tenant's Approvals as soon as practicable after the date of this Agreement and by no later than the Approval Date.

3.2 Landlord to use reasonable endeavours to assist the obtaining of the Tenant's Approvals

The Landlord must do everything reasonably necessary to assist the Tenant in obtaining the Development Approval and the Tenant's Approval. This includes, but is not limited to, the following:

- (a) signing and returning to the Tenant any consent required for the purpose of the Development Approval and Tenant's Approval (in any event no later than 10 Business Days after the Tenant's request);
- (b) providing the Consultants, and any other person engaged by the Tenant, access to the Land to carry out anything reasonably required for the Tenant's Approval; and
- (c) the Landlord must not object to the Development Approval or do anything that may hinder or delay the Tenant from obtaining the Tenant's Approvals.

3.3 Cost of Tenant's Approvals

The Tenant is responsible for all costs and expenses associated with the Tenant's Approvals, including but not limited to, the fees of the Consultants, Council's fees and the costs of any relevant insurances required for the Tenant's Works.

3.4 Tenant to give Development Approval to Landlord

The Tenant will give notice in writing to the Landlord, as soon as practicable, after the Development Approval has been obtained, and will:

- (a) in such notice, advise whether or not the Development Approval is on conditions satisfactory to the Tenant; and
- (b) with such notice, enclose a copy of the Development Approval and all approved plans.

4. Tenant's Works

4.1 Tenant to cause Tenant's Works to be carried out

Subject to the Tenant's Approvals being obtained, the Tenant must, as soon as reasonably practicable, at its own cost and expense:

- (a) carry out the Tenant's Works or cause the Tenant's Works to be carried out; and
- (b) upon the completion of the Tenant's Works return the Balance of the Land to the Landlord in a condition no worse than shown in the dilapidation report referred to in clause 4.5(c).

4.2 Funding of Tenant's Works

- (a) The Tenant may, at its sole discretion, obtain funds for the Tenant's Works by whatever lawful means the Tenant considers necessary or desirable, including but not limited to the following methods:

- (i) a loan advanced by a financial institution of the Tenant's choice (secured or unsecured loans);
- (ii) grants, sponsorships or donations, money raised at fundraisers organised by the Tenant and the Landlord on the Land; and
- (iii) the selling of signage and other rights to the internal and external parts of Premises by the Tenant (subject to the Landlord's consent which will not be unreasonably withheld and Council's consent),

providing however the Premises and the Land or any interest the Tenant has in them may not be offered as security for any loans or encumbered in any way. The Landlord's consent under subclause 4.2(a)(iii) may be withheld if such signage will in any way prejudice or adversely affect the appearance, use, enjoyment or amenity of the Balance of the Land or the appearance of the signage is unsightly or out of keeping with the amenity of the Land and the activities carried on by the Landlord on the Land.

- (b) If the Tenant chooses to raise any secured or unsecured loan pursuant to clause 4.2(a), then the Tenant will:
 - (i) arrange for any relevant security (including any relevant bank guarantee) in respect of the loan to the extent required;
 - (ii) notify the Landlord, prior to raising any loan, the potential liabilities of the Landlord as a result of the Tenant obtaining the loan (if any); and
 - (iii) The Landlord may in its absolute discretion object to any potential liabilities arising from any loans proposed by the Tenant in accordance with this clause 4.2, in which case the Tenant may not proceed to obtain the relevant loan unless the Tenant satisfies the Landlord's concerns in respect of the potential liabilities raised by the Landlord .
- (c) The Tenant must use its reasonable endeavours to obtain initial government grants for the Tenant's Works (**Grants**). The Tenant and the Landlord agree to the following:
 - (i) The Landlord is to be provided an opportunity to incorporate some facilities within the application of the Grants to the benefit of the Club, including croquet club facilities, toilet block with outside ground access and tennis professional office/shop;

- (ii) The Landlord will collaborate with the Tenant as necessary and participate in the Grants process as required by the Tenant; and
 - (iii) The Landlord, may in its own discretion, apply for other grants for other sections of the Landlord's Club.
- (d) So far as to do so is lawful, the Landlord must allow the Tenant to use the Club's facilities, if required, to undertake lawful activities to raise funds for the Tenant's Works.

4.3 Alteration to Tenant's Works

- (a) The Tenant may make any alterations to the Plans or Tenant's Works, as required by Council from time to time; and
- (b) The Tenant may vary the Plans or Tenant's Works in order to comply with the requirements of any Authority or any other authority having jurisdiction in relation to the Tenant's Works or which may be necessitated by the unavailability of any materials or workmanship.
- (c) The Tenant may not otherwise vary the design of the Tenant's Work without the Landlord's approval, which the Landlord shall not unreasonably withhold.
- (d) Nothing in this clause 4.3 shall permit or enable the Tenant to undertake any works other than on the Premises or which increase the external dimensions of the Tenant's Works over and above the dimensions shown in the Plans.

4.4 Tenant's Licence to enter the Landlord's Premises

- (a) With effect from the date of this Agreement, the Tenant and its Consultants may enter upon the Land and the area of the Premises for the purpose of surveying, measuring and other works for the purpose of the application for Development Approval and otherwise carrying out the Tenant's Works but for no other purpose, and subject always to the rights of the Landlord to remain in possession of the Premises until Practical Completion.
- (b) The Landlord must cause the Tenant, the Tenant's Consultants and the Builder free and unhindered access to enter upon the Land or Premises to effect the Tenant's Works.
- (c) Nothing in this clause 4.4 shall permit or enable the Tenant to do anything for which any of the Tenant's Approvals are required unless the required Tenant's Approvals have been obtained and provided to the Landlord.
- (d) The Tenant must ensure that any persons, in exercising the rights conferred under this clause 4.4:
 - (i) comply with all laws and the reasonable requirements of the Landlord;
 - (ii) must not cause any significant, unreasonable, or irreversible physical damage or alteration to the Balance of the Land, other than as agreed between the Landlord and the Tenant;
 - (iii) must not cause any unreasonable interference with or disturbance to, the Balance of the Land, any existing improvements on the Land or any owners, tenants or occupiers of the Land;
 - (iv) inform the Landlord of damage to the Balance of the Land or of a faulty service immediately after it becomes aware of it;
 - (v) conduct all appropriate service checks and take all other necessary precautions to ensure no services are interfered with, before any holes are bored or any

other penetrations are made in the Land, unless such interference is in compliance with clauses 4.6 (g), 4.6 (h), and 4.6 (k) below; and

- (vi) promptly make good any damage caused to the Land as a result of a breach of this clause 4.4.
- (e) In clauses 4.4(a), 4.4(b) and 4.4(c) a reference to the "Tenant" means the Tenant and the Tenant's invitees, servants, agents and contractors.
- (f) The Tenant:
 - (i) shall exercise the rights under this clause 4.4 at its sole cost and risk;
 - (ii) releases and indemnifies the Landlord in respect of all Claims which the Landlord may incur or may become liable for in connection with a breach by the Tenant of its obligations under this clause 4.4 or arising in any way from the Tenant exercising its rights under this clause 4.4; and
 - (iii) without limitation, indemnifies the Landlord in respect of any Claims made against the Landlord by any of the Consultants where the Claim is made as a consequence of, or arising out of, the right of access the subject of clause 4.4 being exercised by the Consultants or any of them.
- (g) The indemnities in clause 4.4 do not apply to the extent that any damage, loss, injury or death is caused or contributed to by the Landlord's negligence or default.

4.5 Prior to Commencement of Construction

Prior to commencement of any work on the Premises which forms part of the Tenant's Works, the Tenant must deliver to the Landlord:

- (a) copies of the policies of insurance required to be effected under clause 4.13;
- (b) the Bank Guarantee required under clause 12;
- (c) copies of the Tenant's Approvals;
- (d) a full pre-construction dilapidation report of the improvements immediately adjacent to the Premises on the Land. The dilapidation report shall include the pre-construction condition of:
 - (i) the Premises;
 - (ii) the Landlord's clubhouse adjacent to the Premises; and
 - (iii) the driveway adjacent to the Premises.

4.6 Carrying out Tenant's Works

- (a) The Tenant may engage such contractors, employees, agents and workers in its absolute discretion as it thinks fit and, on such terms, and conditions as the Tenant requires for the purpose of the Tenant's Works.
- (b) The Tenant's Works must be carried out:
 - (i) in a good and workmanlike manner, and with new and sound materials of their respective kinds;
 - (ii) in accordance with the terms of the Tenant's Approvals, and otherwise in compliance with all requirements of the Tenant's Approvals;

- (iii) within the hours permitted by the relevant Development Approval; and
 - (iv) with due expedition, regularly and diligently.
- (c) The Tenant shall take the Premises as it finds it for the purpose of the Tenant's Works.
 - (d) The Tenant agrees that it has not relied on any verbal or written representation from the Landlord as to the nature and condition of the Premises.
 - (e) The Tenant shall provide to the Landlord, free of charge, a copy of any geotechnical report of the Premises obtained by the Tenant on a "For Information Only" basis. The Tenant shall provide the "For Information Only" copy of the geotechnical report within three (3) days of obtaining the report from the Tenant's geotechnical engineer(s).
 - (f) The Tenant shall at all times during the construction of the Tenant's Works, comply with all of the conditions of the Tenant's Approvals and ensure that the Premises and the Balance of the Land are kept in a tidy condition and shall further ensure that:
 - (i) dust and mud minimisation procedures are adopted;
 - (ii) construction waste is removed regularly and promptly; and
 - (iii) all plant and construction equipment is stored in a safe and in accessible manner.
 - (g) The Tenant shall:
 - (i) establish separate metering for all temporary services on the Land;
 - (ii) establish temporary power, water and sewerage services for the purposes of carrying out the Tenant's Works.
 - (h) The Tenant shall do all things on site necessary to protect all people (including but not limited to its own visitors and the Landlord's staff, visitors and club members) at all times.
 - (i) The Tenant shall not leave any pits uncovered or without barricades.
 - (j) The Parties acknowledge and agree that:
 - (i) all archaeological finds, relics, artifact and the like shall belong to the Landlord;
 - (ii) the Tenant shall immediately notify the Landlord of any and all archaeological finds, relics, artifact and the like upon their discovery; and
 - (iii) unless otherwise agreed at the time of any discovery, the Tenant shall, at its cost, take all steps necessary to care for any and all archaeological finds, relics, artifact and the like upon their discovery.
 - (k) The Tenant shall be entitled to carry out urgent protection as reasonably necessary if the Landlord has failed to do so.

4.7 Sunset Date and Termination

If the Tenant's Works:

- (a) have not commenced on or before the Works Sunset Date; or
- (b) are not completed on or before the Sunset Date, or any extension to the Sunset Date in accordance with clause 4.8 of this Agreement,

then either party may terminate this Agreement in writing, by serving such notice of termination on the other party and, subject to clause 12, the Parties are otherwise released from their obligations under this Agreement and the Leases, and neither party may make any claim for damages against the other (other than any antecedent breach).

4.8 Extension to Sunset Date

- (a) If the Tenant's Works are not completed before the Sunset Date, the Sunset Date may be extended by the Tenant by notice to the Landlord in writing, for the period in which the Sunset Date was delayed, if the cause of the delay is unavoidable due to:
- (i) any event not reasonably foreseeable at the date of this Agreement;
 - (ii) any industrial dispute or action affecting the construction;
 - (iii) the inability to obtain labour or materials;
 - (iv) inclement weather;
 - (v) restrictions, regulations or controls imposed by law;
 - (vi) fire earthquake, flood, storm or tempest;
 - (vii) delay caused by any Dispute under this Agreement;
 - (viii) the Landlord failing to provide the Tenant, in reasonable time, any instructions or information that the Tenant has requested from the Landlord in writing and is necessary for the Tenant; and
 - (ix) any other event or matter which is reasonably beyond the control of the Tenant and the Tenant could not have prevented or avoided,

(Delay Events).

- (b) Within fifteen (15) Business Days of a Delay Event arising, the Tenant must notify the Landlord of the Delay Event, its effect on the Tenant's Works and the period in which the Sunset Date will be extended.

4.9 Landlord to retain ownership of Plant

The Landlord will retain full ownership of all building materials affixed to the Land including the Plant resulting from the Tenant's Works.

4.10 Access after hours

Subject to clause 4.6(b)(iii), if the Tenant requires access to the Premises outside normal working hours for the purposes of the Tenant's Works, the Tenant must obtain the consent of the Landlord, which will not be unreasonably withheld or delayed.

4.11 Facilities for carrying out of Tenant's Works

Subject to clause 4.6(g), the Landlord must assist the Tenant and provide the Tenant with all temporary services, such as electricity, water, heat, security, toilet facilities, hoisting facilities, refuse removal and other utilities and services which the Tenant may require for the purpose of the Tenant procuring the Tenant's Works, subject to any reasonable terms that may be imposed by the Landlord.

4.12 Indemnity

The Tenant indemnifies the Landlord from and against all any actions, claims, demands, losses, damages, costs and expenses incurred or suffered by the Landlord, or for which the Landlord shall be, or may become, liable in respect of or arising from any or all of:

- (a) all fees, charges and other payments payable to the Council, any Government Agency or Authority in respect of the Tenant's Works;
- (b) loss, damage or injury from any cause whatsoever to property or persons caused or contributed to by the performance of the Tenant's Works, use of the Premises or the common areas of the Land that provide a means of access to the Premises by the Lessee notwithstanding that such use of the Premises, common areas of the Land may be within the scope of the permitted use or by any servant, agent, contractor or sub-tenant of the Lessee or any person in or on the Premises by lawful licence of the Tenant or any other person claiming through or under the Lessee; and
- (c) loss, damage or injury from any cause whatsoever to property or persons within or without the Premises occasioned or contributed to by any act, omission, neglect, breach or default of the Tenant or any servant, agent, contractor or sub-tenant of the Tenant or any person in or on the Premises by lawful licence of the Tenant or any other person claiming through or under the Tenant.

(d)

except to the extent caused by any act, omission, neglect, breach or default of the Landlord or any servant, agent, contractor of the Landlord.

4.13 Tenant's Construction Insurance

- (a) Prior to commencement of any construction which forms part of the Tenant's Works, the Tenant shall ensure that the relevant third party identified below shall take out and maintain policies of insurance for the following:
 - (i) Construction works to the value of \$1,000,000 or the value of the proposed construction works whichever is higher (to be taken out by the Tenant's builder);
 - (ii) Property – all risks insurance (minimum \$5,000,000) (to be taken out by the Tenant's builder);
 - (iii) Professional liability (in relation to design) (minimum \$5,000,000) (to be taken out by the Tenant's builder and/or their consulting designers);
 - (iv) Public Liability (minimum \$20,000,000) (to be taken out by the Tenant's builder); and
 - (v) workers compensation at the statutory rate (to be taken out by the Tenant's Builder in accordance with relevant statutory obligations).
- (b) The Tenant shall provide evidence of such insurance acquired under this clause before commencement of any construction which forms part of the Tenant's Works. .
- (c) To the extent that the Tenant is aware, the Tenant shall immediately give written notice to the Landlord in the event that any of the above policy of insurance is:
 - (i) cancelled,
 - (ii) suspended;
 - (iii) subject to a disputed or denied claim; or

- (iv) in any other way adversely affected.
- (d) The Tenant shall ensure that the Landlord is a nominated beneficiary of the proceeds of insurance on the Tenant's builder's insurance policies set out in clause 4.13(a), except workers compensation.
- (e) The Tenant shall ensure that its builder has the same insurance as set out in this clause.
- (f) The Tenant shall ensure that the Tenant and the Landlord are nominated as beneficiaries on the builder's insurance policies.
- (g) The Tenant shall provide a copy of the builder's insurance certificates of currency within ten (10) Business Days of receiving written request by the Landlord if the Tenant has not provided this before commencement of any construction which forms part of the Tenant's Works.

4.14 Construction Documentation

- (a) The Tenant shall provide the Landlord with a copy of all as-built drawings in respect of the Tenant's Works within twenty (20) Business Days of the receipt of the same from the Tenant's builder.
- (b) The Tenant shall provide the Landlord with a copy of all Operation and Maintenance Manuals in respect of the Tenant's Works and relevant equipment which form part of the Tenant's Works within twenty (20) Business Days of the receipt of the same from the Tenant's builder.
- (c) The Tenant shall provide the Landlord with a copy of all compliance certificates for design and workmanship within twenty (20) Business Days of the receipt of the same from the Tenant's Builder.
- (d) The Tenant shall provide the Landlord with a copy of an as-built site identification survey within twenty (20) Business Days of the date of Practical Completion of the Tenant's Works.

4.15 WHS Legislation Requirements

- (a) The following words and phrases have the meaning ascribed to them:

"Construction Arrangements" means all of the arrangements and agreements between the Tenant and any persons engaged by the Tenant to undertake construction work ("**Builder**") in respect of the performance of the Construction Work;

"Construction Project" means all Construction Work to which the WHS Legislation applies, that is carried out by, or at the instigation, of the Tenant on the Designated Area pursuant to the Construction Arrangements;

"Construction Work" means all construction work undertaken by a Builder pursuant to any Construction Arrangements;

"Designated Area" means the area comprising the Premises;

"Principal Contractor" has the meaning of "principal contractor" in the WHS Legislation;

"WHS Act" means the Work Health and Safety Act 2011; and

"WHS Legislation" means, collectively, the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2017.

- (b) For the purposes of the WHS Legislation; the Tenant:
 - (i) pursuant to clause 293 of the Work Health and Safety Regulation 2017 must appoint a Builder as the Principal Contractor for the Construction Project;
 - (ii) authorises the Builder to exercise the authority of the Tenant in relation to the Designated Area that is necessary to enable the Builder to discharge the responsibilities imposed on Builder as the, and as a, Principal Contractor by the WHS Legislation;
 - (iii) authorises the Builder to manage and control the workplace to the extent necessary to, and authorises and directs the Builder to, discharge the duties imposed on a Principal Contractor under the WHS Legislation; and
 - (iv) must ensure:
 - (i) the Builder accepts the appointment as Principal Contractor in connection with the Construction Works and agrees that the Builder has management and control of the workplace for the purposes of the WHS Legislation; and
 - (ii) the Builder acknowledges that it will be the Principal Contractor for the Construction Project and it will assume and discharge all responsibilities connected with its appointment as the Principal Contractor for the Construction Project until the Construction Project is completed.

5. The Leases – Grant and Execution

5.1 Grant of Leases

Subject to the Tenant's Works reaching Practical Completion on or before the Sunset Date:

- (a) the Landlord will grant to the Tenant and the Tenant will accept from the Landlord the Leases of the Premises on the terms and conditions set out in the draft lease contained in Schedule 3 respectively modified as set out in the definition of "Leases";
- (b) the term of the First Lease will commence on the Commencement Date;
- (c) the term of the Second Lease will commence on the fifth anniversary of the Commencement Date;
- (d) the term of the Third Lease will commence on the tenth anniversary of the Commencement Date;
- (e) the term of the Fourth Lease will commence on the fifteenth anniversary of the Commencement Date;
- (f) the term of the Fifth Lease will commence on the twentieth anniversary of the Commencement Date; and
- (g) the term of the Sixth Lease will commence on the twenty fifth anniversary of the Commencement Date.

5.2 Execution of Leases by Tenant

- (a) The Landlord must submit two (2) copies of each of the Leases with the Survey Plan completed as to the items set out in clauses 5.3(a) to 5.3(f) inclusive, to the Tenant's Solicitors for execution by the Tenant at least five (5) Business Days before the Commencement Date.

- (b) Provided that the Tenant is reasonably satisfied that the Leases as submitted correctly reflect the terms as herein agreed, the Tenant must return the same, duly executed, to the Landlord or the Landlord's solicitor (if any) within fourteen (14) days of the receipt of the Leases under clause 5.2(a).

5.3 Completion of Particulars

The Tenant and the Landlord authorise the Landlord's solicitors to complete the Leases by inserting the following:

- (a) the date of the respective Leases;
- (b) the respective commencement dates;
- (c) the respective terminating dates;
- (d) all other dates consequential upon the respective commencement dates;
- (e) the then current description of the Premises, and by attaching the Survey Plan of the Premises showing the location of the Premises on the Land; and
- (f) Any other details reasonably required to complete the Leases in accordance with this Agreement and as required by NSW Land Registry Services for the purpose of registration of the Leases.

5.4 Execution of Leases by Landlord

- (a) As soon as possible after the later of:
 - (i) the Tenant complying with its obligations under clauses 4.14 and 5.2(b); and
 - (ii) the Commencement Date,the Landlord must:
 - (iii) duly execute and deliver copies of the respective Leases to the Tenant or the Tenant's solicitors, within fifteen (15) Business Days after the later of the dates referred to in subclauses (i) and (ii);
 - (iv) obtain consent of any mortgagee for the registration of the Leases; and
 - (v) promptly lodge the Leases for registration.
- (b) Until the Leases are duly executed and delivered by the Landlord to the Tenant and executed by the Tenant, the parties are bound by and must duly observe and perform the terms, conditions and obligations set out in the Leases as if the Leases were duly executed and delivered as provided in this clause 4.

6. Rent Commencement

Rent and all other moneys payable by the Tenant in accordance with the terms of the Leases, must be payable on and from the Commencement Date.

7. Default

7.1 Events of Default

- (a) The following events are events of default. If:
- (i) **breach of agreement** – either party commits or permits to occur any breach or default in the due and punctual performance of any of its obligations under this Agreement (including an obligation under the Leases);
 - (ii) **winding up** - any order is made, or resolution passed for the winding up of either party except for the purpose of reconstruction while solvent or amalgamation while solvent in respect of which:
 - (i) if the reconstruction or amalgamation results in the wound-up party's financial position being materially adversely affected, the other party has given its prior consent (such consent not to be unreasonably withheld); or
 - (ii) if the reconstruction or amalgamation does not result in the wound-up party's financial position being materially adversely affected, the wound-up party has given to the other party ten (10) Business Days prior notice;
 - (iii) **liquidator appointed** - an order is made in respect of either party for the appointment of a liquidator or provisional liquidator;
 - (iv) **arrangement or composition** – either party makes an assignment for the benefit of or enters into any arrangement or composition with its creditors or is unable to pay its debts within the meaning of the *Corporations Act*;
 - (v) **administrator appointed** - any administrator or controller of either party is appointed pursuant to the provisions of the *Corporations Act*; or
 - (vi) **mortgage powers** - any of the business affairs or undertaking of either party is taken over by a receiver under any mortgage, charge or debenture.
- (b) Subject to clause 7.2 to clause 7.4 inclusive, if an event of default occurs, the non-defaulting party may terminate this Agreement by notice in writing to the defaulting party. The termination will be effective from the date of the notice. Any termination will not affect any action or other right or remedy of the non-defaulting party. Upon giving the notice, the non-defaulting party will be freed and discharged from any action or demand by or obligation under this Agreement.

7.2 Notice of Default

Except in the case of a breach of clause 7.1(a)(ii), before exercising any right under clause 7.1, the non-defaulting party must give written notice to the defaulting party setting out details of the event of default which has occurred.

7.3 Content of Notices

A notice given under clause 7.2 must require the defaulting party to:

- (a) rectify the event of default within a reasonable time (being a period of not less than five (5) Business Days) if the event of default is capable of rectification; or
- (b) pay compensation to the reasonable satisfaction of the non-defaulting party (as specified in the notice) in lieu of rectification if the event of default is not capable of rectification, but the payment of compensation will result in the non-defaulting party

being restored to the position in which it would have been had the event of default not occurred,

within the period reasonably specified by the non-defaulting party in the notice.

7.4 Compliance with Notice

If:

- (a) the notice given under clause 7.2 requires the defaulting party to comply with either clause 7.3(a) or clause 7.3(b); and
- (b) the defaulting party complies fully with the notice,

the non-defaulting party must not exercise any right under clause 7.1 or any other provision of this Agreement as a result of any event of default which has occurred.

7.5 Damages

If the non-defaulting party terminates this Agreement under clause 7.1, then the non-defaulting party will be entitled to claim damages against the defaulting party for any breach of this Agreement prior to the date of termination.

8. Assignment

Neither the Landlord nor the Tenant may transfer, assign or part with its rights or obligations or the benefit of those rights under this Agreement in respect of the Premises without the other party's prior written consent in writing, which consent may not be unreasonably withheld provided the party assigning or transferring such rights procures from the assignee or transferee a deed on the same terms as this Agreement.

9. Disputes

9.1 Dispute Resolution

The Landlord and Tenant must not commence any court or arbitration proceedings in respect of any disputes or differences arising out of this Agreement except where the party seeks urgent interlocutory relief, unless the Landlord and Tenant have attempted to resolve the dispute in accordance with this clause 9.

9.2 Notice of Dispute

Either party may, at any time, notify the other party in writing at the address set out in this Agreement that there is a dispute or difference concerning any matter in this Agreement. That notice must:

- (a) identify the subject matter of the dispute;
- (b) identify the relevant provisions of this Agreement;
- (c) annex copies of any correspondence or background material and information, relevant to that dispute; and
- (d) contain any particulars of the quantification of the dispute.

9.3 Endeavour to resolve dispute

The parties must, within ten (10) Business Days after service of a notice under clause 9.2, endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution

techniques such as mediation, expert evaluation or determination or similar techniques agreed by them, including by meeting in an attempt to discuss, and to reach a mutually acceptable decision, on the matter in dispute.

9.4 Referral to Mediation

If the matter in dispute is not settled and the parties do not agree within ten (10) Business Days as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection of the independent person required for such technique,

then either party may request the President of the Law Society of New South Wales (**President**) to nominate a mediator of at least 5 years' experience to resolve the dispute (**Mediator**). The Landlord and Tenant must pay the Mediator's fees in equal shares and otherwise pay their own costs of the mediation..

9.5 Failure to resolve dispute

In the event that the dispute is not resolved by mediation with twenty (20) Business Days of the service of the notice referred to in clause 9.2 (or such further period agreed in writing between the parties), either the Landlord or the Tenant may commence any court proceedings in respect of any disputes or differences arising out of this Agreement.

10. Warranties

10.1 Warranties

Each party warrants to the other party that:

- (a) it has the power to enter into and perform this Agreement;
- (b) by entering into and performing this Agreement:
 - (i) it does not breach any obligation, including any statutory, contractual or fiduciary obligation; and
 - (ii) it is not in default under an agreement which binds it;
- (c) no action has been taken towards the winding-up of it;
- (d) it has not proposed or reached a voluntary arrangement with a creditor;
- (e) it is able to pay its debts as and when they fall due; and
- (f) this Agreement is a valid, binding and enforceable obligation of it.

10.2 Indemnity for breach of warranty

Each party indemnifies and holds each other party harmless from any damage, loss or expense, directly or indirectly as a result of or arising out of the failure of a warranty made by that party in clause 10.1 to be true and correct on the date of this Agreement.

10.3 Enforcement of indemnities

- (a) A party is not obliged to incur an expense or make a payment before enforcing a right of indemnity under this clause 10.

- (b) Damage, loss or expense includes but is not limited to interest, penalties and expenses.
- (c) Expenses include but are not limited to reasonable legal fees, suffered or incurred by it or them.

11. Project Control Committee

11.1 Participants

- (a) A Project Control Committee (**PCC**) will be established consisting of two (2) members, one (1) appointed by the Landlord, and one (1) appointed by the Tenant. The first nominated members of the PCC are:
 - (i) for the Landlord: Bain Shenstone; and
 - (ii) for the Tenant: Christopher Cooper.
- (b) For the avoidance of doubt, the Landlord and Tenant acknowledge that the PCC comprises a mechanism through which the activities to be undertaken pursuant to this Agreement for Lease can be monitored, and a forum in which issues arising in respect of those activities can be discussed by the parties. Resolutions of the PCC are not binding on the Landlord or the Tenant.
- (c) The Landlord and Tenant will alternate convening and chairing meetings of the PCC.

11.2 Duties

The duties of the PCC will be:

- (a) to monitor the progress of the Tenant's Works;
- (b) to review, and wherever possible, resolve, any matters of concern to the Landlord or the Tenant, arising from the Tenant's Works;
- (c) to carry out such duties and responsibilities as are specifically assigned to it under this Agreement, or by agreement between the parties; and
- (d) such other duties as the parties may agree in writing from time to time.

11.3 Replacement of nominees

- (a) The Landlord and the Tenant may by notice in writing to the other:
 - (i) remove or replace its respective nominated member; or
 - (ii) appoint, remove or replace its alternate member, for its nominated member on the PCC.
- (b) Any notice given under paragraph 11.3(a), must indicate the replacement nominated member or alternative.

11.4 Invitees

The Landlord or the Tenant may:

- (a) invite any person to attend any meeting of the PCC as an observer; and
- (b) procure representatives of any contractor, or any sub-contractor of the Tenant, attend any nominated meeting of the PCC.

11.5 Frequency of meetings

Meetings of the PCC will occur at such times and places as Landlord and the Tenant (each acting reasonably) determine but, in any event, at least Monthly.

11.6 Attendance at meetings

Each of the Landlord and the Tenant must use reasonable endeavours to ensure that its respective nominated member, or alternate, attends all meetings and adjourned meetings of the PCC, except in unavoidable circumstances which prevent their attendance.

12. Security

12.1 Bank Guarantee provided to Landlord

The Tenant must provide security for its performance of its obligations under this Agreement by providing the Landlord with a Bank Guarantee for \$140,000.00 prior to commencement of any construction which forms part of the Tenant's Works.

12.2 Landlord's right to draw on Bank Guarantee provided to it

- (a) Subject to clause 12.4, the Landlord may draw on the Bank Guarantee provided by the Tenant under clause 12.1 if:
 - (i) the Landlord determines that the Tenant has committed an event of default as defined in clause 7.1; or
 - (ii) if any construction which forms part of the Tenant's Works has commenced and this Agreement is terminated pursuant to clause 4.7.
- (b) Except in the case of a breach of clause 7.1(a)(ii), before exercising any right under clause 12.2(a)(i), the Landlord must give written notice to the Tenant setting out details of the event default which has occurred, in which case clause 7.3 shall apply.
- (c) If:
 - (i) the notice given under clause 12.2(b) requires the Tenant to comply with either clause 7.3(a) or clause 7.3(b); and
 - (ii) the defaulting party complies fully with the notice,the Landlord must not exercise any right under clause 12.2(a) a result of any event of default which has occurred.

12.3 Procedure for Landlord to draw on Bank Guarantee provided to it

To draw on the Bank Guarantee the Landlord must:

- (a) notify the Tenant in writing of the basis and extent of its entitlement; and
- (b) give to the security provider a written demand for payment.

12.4 Call on Bank Guarantee

The Tenant acknowledges:

- (a) calling on the Bank Guarantee shall not release the Tenant from liability for the Tenant's breach of this Agreement nor in any way limit the Landlord's rights under this Agreement;

- (b) the Landlord may be entitled to seek further damages from the Tenant for such breach; and
- (c) that damages may be an inadequate remedy for a breach of this Agreement and the Landlord shall be entitled to seek an order for specific performance relating to such breach.

12.5 Consequences of the demand not being met

- (a) Where the Landlord makes a demand for payment of any amount under the Bank Guarantee and the issuing bank pays the Landlord the amount demanded and the Tenant has remaining obligations under this Agreement the Tenant must provide an additional Bank Guarantee to the Landlord for any amount equal to the difference between \$140,000 and the amount paid to the Landlord.
- (b) Where the Tenant fails to provide the additional Bank Guarantee to the Landlord for any amount equal to the difference between \$140,000 and the amount paid to the Landlord within twenty one (21) days of the demand of the Landlord, the Landlord may terminate this Agreement by notice in writing to the Tenant.

12.6 Release of Bank Guarantee on practical completion

When Practical Completion has occurred and the Tenant has discharged any remaining obligations under this Agreement, the Landlord must return the Bank Guarantee to the Tenant within ten (10) Business Days of the Tenant's demand.

13. Notices

13.1 General

Any notice, demand, certification or other communication under this Agreement must be given in writing and may be given by an authorised representative of the sender.

13.2 Address for service

A notice, request, demand, consent, approval or other communication to or by a party or between the parties to this Lease must be:

- (i) in writing; and
- (ii) sent by registered post or left at the address or sent to the email address or facsimile number of the party set out in the Parties section of this Agreement, as varied by notice.

13.3 Method of service

A notice or approval is taken to be given if sent by:

- (i) post, is deemed to have been served on the fourth Business Day after the day it was posted;
- (ii) facsimile, is deemed to have been served at the time that the notice was transmitted unless the sender's facsimile machine indicates a malfunction in the transmission; or
- (iii) email, immediately when sent, unless the sender receives an out of office reply or the email is undeliverable.

14. Legal Costs

14.1 Legal costs

The Landlord and the Tenant agree to:

- (a) equally share the Tenant's legal costs and disbursements of preparing this Agreement and the Leases; and
- (b) each bear their own legal costs and disbursements for and incidental to the negotiation, amendment and execution of this Agreement and the Leases.

14.2 Registration fees

The Tenant must pay the registration fees of the Leases.

15. Goods and Services Tax

- (a) The amount payable by one party to this Agreement (**Recipient**) to another party to this Agreement (**Supplier**) for or in connection with a taxable supply provided by the Supplier to the Recipient, does not include any GST.
- (b) The Recipient must pay the Supplier an additional amount on account of GST equal to the amount payable by the Supplier for the relevant Taxable Supply multiplied by the prevailing GST rate.
- (c) The additional amount is payable at the same time as when the amount for the relevant Taxable Supply is payable by the Recipient to the Supplier.
- (d) The additional amount is not payable until the Supplier issues to the Recipient a Tax Invoice.
- (e) For the purposes of this clause, each of **GST**, **Taxable Supply** and **Tax Invoice** have the same meaning as those terms have in *A New Tax System (Goods and Services Tax) Act 1999*.

16. General

16.1 Governing law and jurisdiction

- (a) This Agreement is governed by the laws of the State of New South Wales.
- (b) The parties submit to the exclusive jurisdiction of the New South Wales courts.

16.2 Amendment

This Agreement may not be amended or varied unless the amendment or variation is in writing signed by all parties.

16.3 Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Agreement under that power.

16.4 Entire agreement

This Agreement constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and

indemnities in relation to that subject matter are replaced by this Agreement and have no further effect.

16.5 Exercise of a right

- (a) A party may exercise a right:
 - (i) at its discretion; and
 - (ii) separately or together with another right.
- (b) If a party exercises a single right or only partially exercises a right, then that party may still exercise that right or any other right later.
- (c) If a party fails to exercise a right or delays in exercising a right, then that party may still exercise that right later.

16.6 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one document.

16.7 Severability

Part or all of any provision of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

16.8 Survival of indemnities

Each indemnity in this Agreement:

- (a) is a continuing obligation, separate from the other obligations of a party; and
- (b) survives termination of this Agreement.

16.9 Waiver

A provision of this Agreement or a right created under it may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.

17. Order of Precedence

In the event of any ambiguity, discrepancy or inconsistency with respect to the documents referred to below then the order of precedence of those documents is as set out below:

- (a) this Agreement for Lease;
- (b) the Leases; and
- (c) the Management Deed,


such that the provisions of the documents described in the earlier subclauses shall take precedence over those described in later subclauses. For example, the document described in subclause (a) shall take precedence over the documents described in subclauses (b) and (c), and the documents described in subclause (b) shall be subject to the document described in (a) but shall take precedence over the document described in (c).

18. Compliance with Associated Legislation

The Tenant must in good faith, do all such things (including execute documents) and do all such things, as the Landlord may reasonably requires of the Tenant such as to enable, and facilitate, the implementation of the provisions of this Agreement and without limitation the Tenant must assist the Landlord to, and itself comply (to the extent it is applicable), with the Registered Clubs Act 1976 and the Liquor Act 2007 ("**LQA**") as they apply to the dealings and proposed dealings between the Landlord and the Tenant including with respect to section 94 of the LQA.

EXECUTED as an agreement

EXECUTED by The Cheltenham
Recreation Club Ltd ACN 000 005 890
in accordance with section 127 of the
Corporations Act 2001


Signature of Director

LESLEY TREGOMING
Name of Director


Signature of Director

BAN SHENSTON
Name of Director

EXECUTED by Sydney Real Tennis
Club Inc NSW Association Number: INC
9895108 in accordance with section 22(1)
of the Associations Incorporations Act
2009 (NSW)

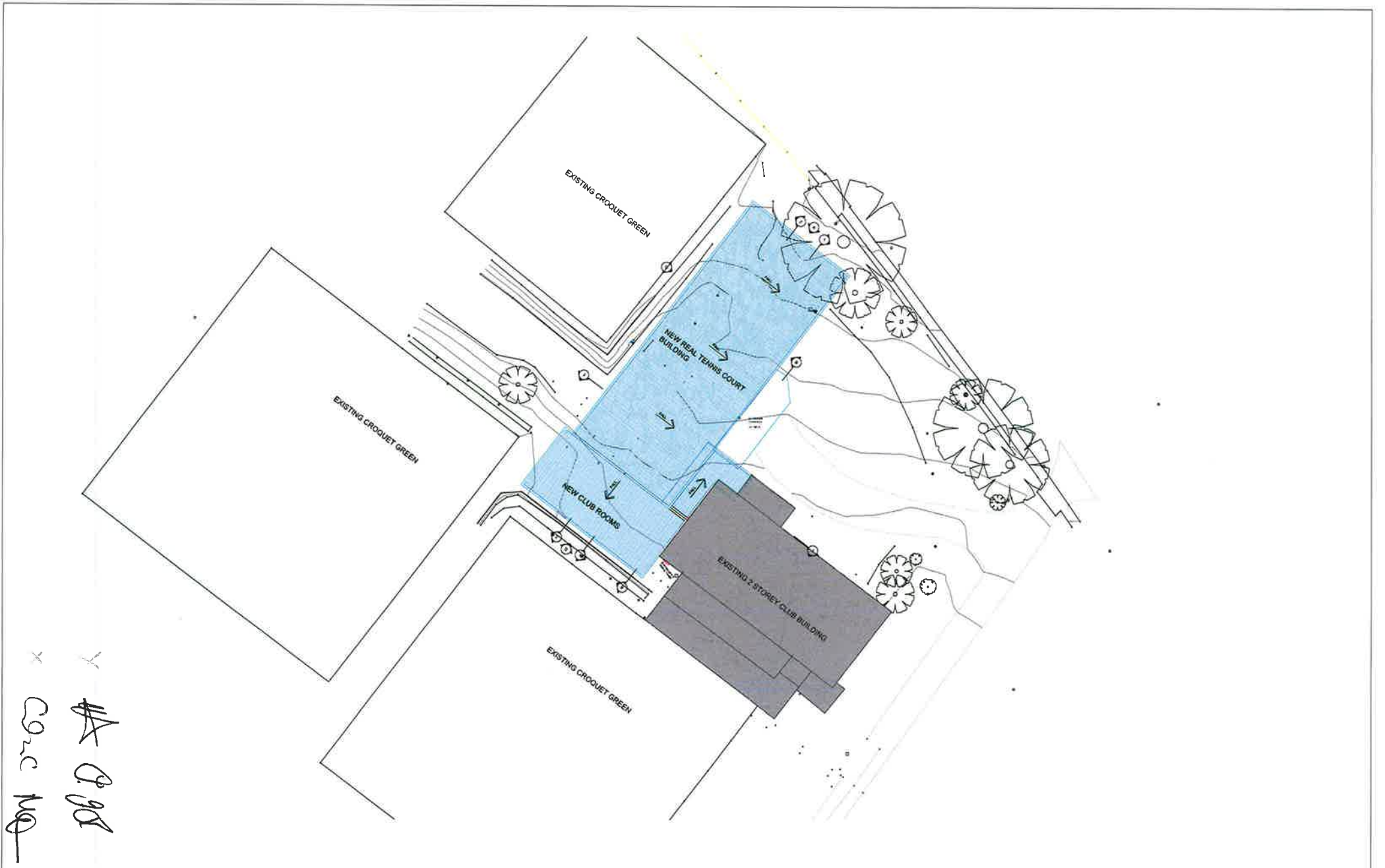

Signature of Authorised Signatory

X MICHAEL FITZGERALD
Name of Authorised Signatory


Signature of Authorised Signatory

X CHRISTOPHER COOPER
Name of Authorised Signatory

Schedule 1 Plans



x Core No
y A Q 98

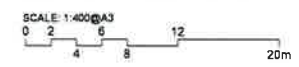
AT THE CHELTENHAM RECREATION CLUB
60 - 74 THE CRESENT, CHELTENAHM, NSW 2119

PREPARED BY: Sav Cremona
Tel: (+61) 405 557 880
Email: savcremona@gmail.com

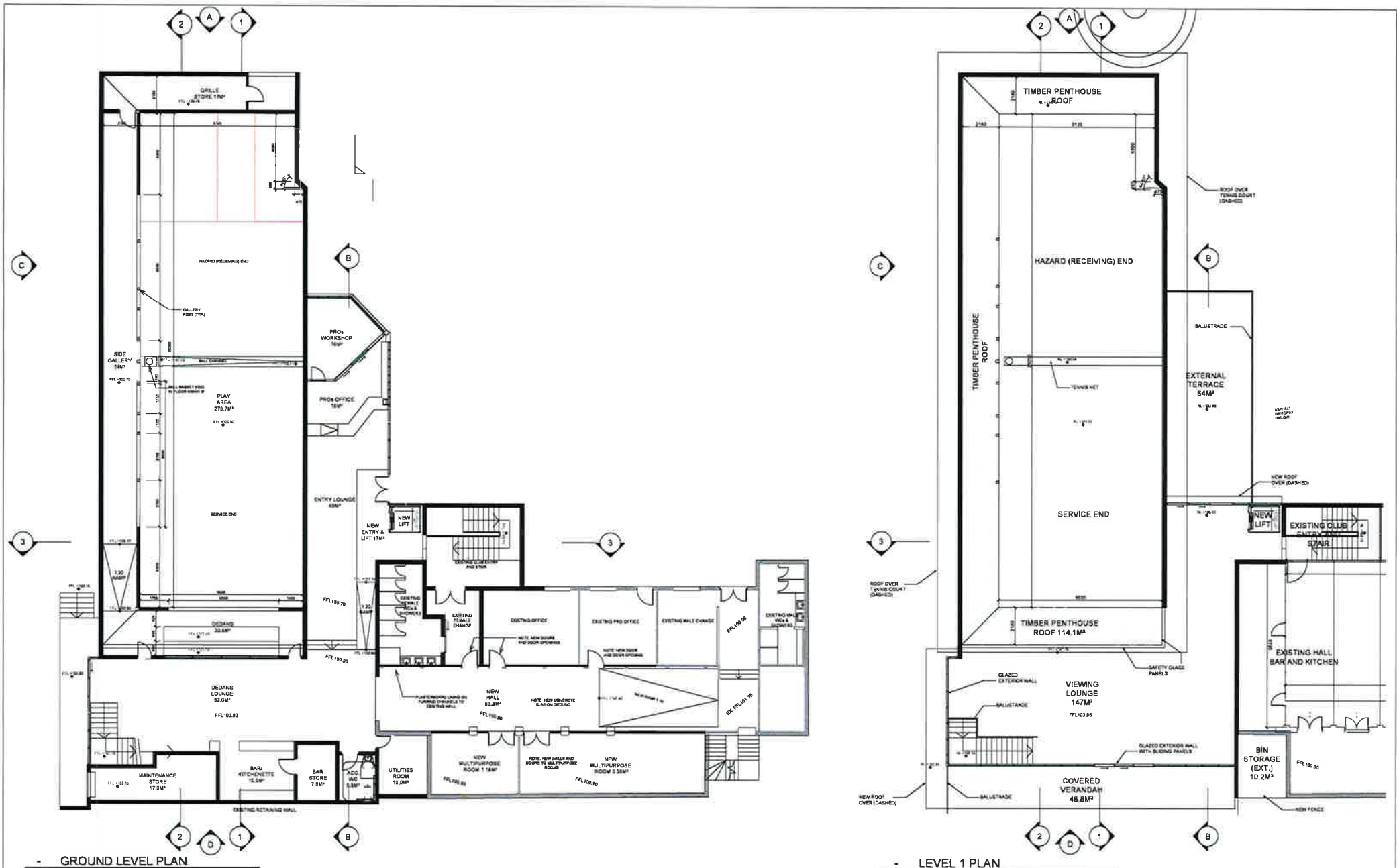


**PROPOSED NEW INDOOR REAL TENNIS COURT
AND CLUB ROOMS**

PROPOSED SITE PLAN



**PRELIMINARY
SET 29/8/2018**



- GROUND LEVEL PLAN

- LEVEL 1 PLAN

AT THE CHELTENHAM RECREATION CLUB
 60 - 74 THE CRESENT, CHELTENAHM, NSW 2119

PREPARED BY: Sav Cremona
 Tel: (+61) 405 557 660
 Email: savcremona@gmail.com

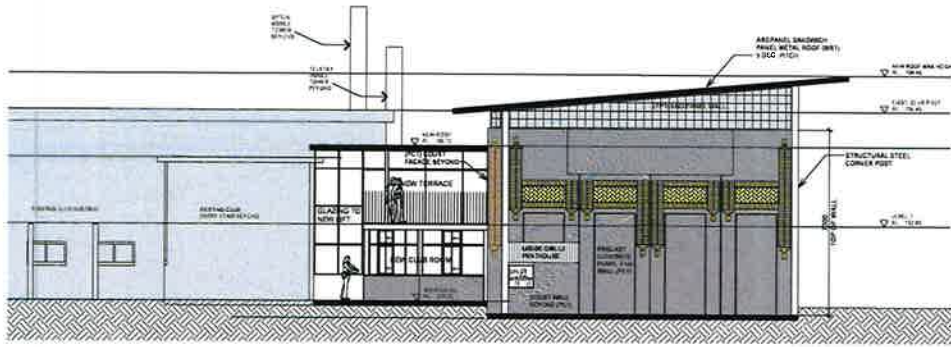


PROPOSED NEW INDOOR REAL TENNIS COURT
 AND CLUB ROOMS

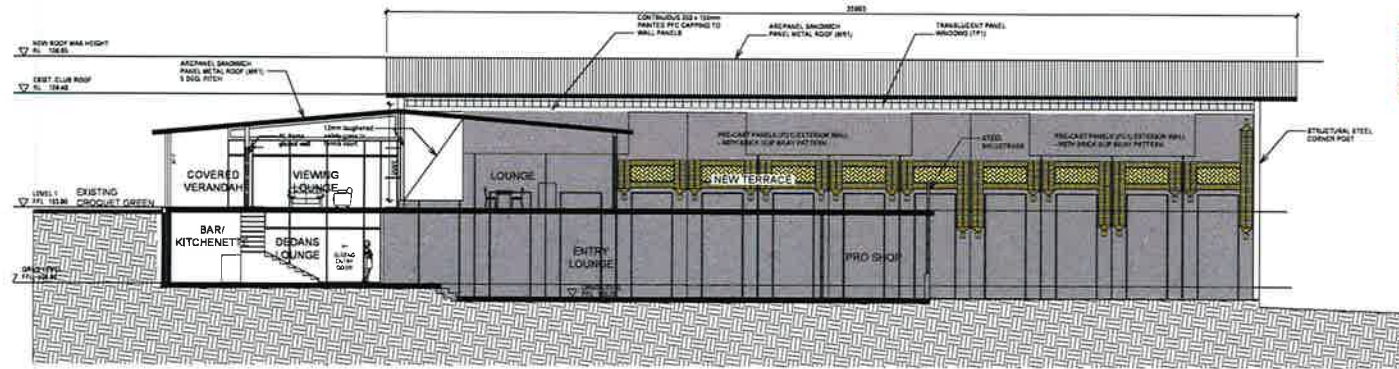
INTERNAL PLANS

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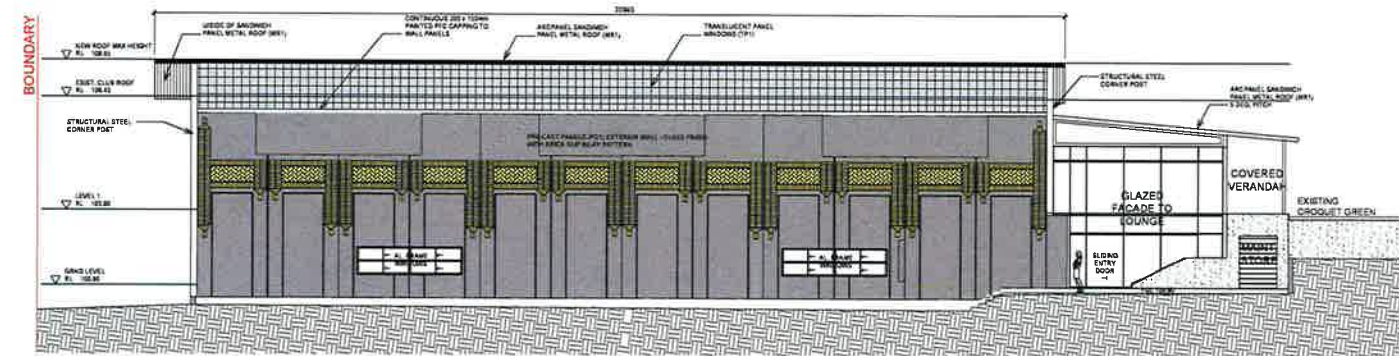
 PRELIMINARY
 SET 29/8/2018



A NORTH ELEVATION



B-B EAST SECTIONAL-ELEVATION



C WEST ELEVATION

AT THE CHELTENHAM RECREATION CLUB
 60 - 74 THE CRESENT, CHELTENAHM , NSW 2119
 PREPARED BY: Sav Cremona
 Tel: (+61) 406 557 880
 Email: savcremona@gmail.com

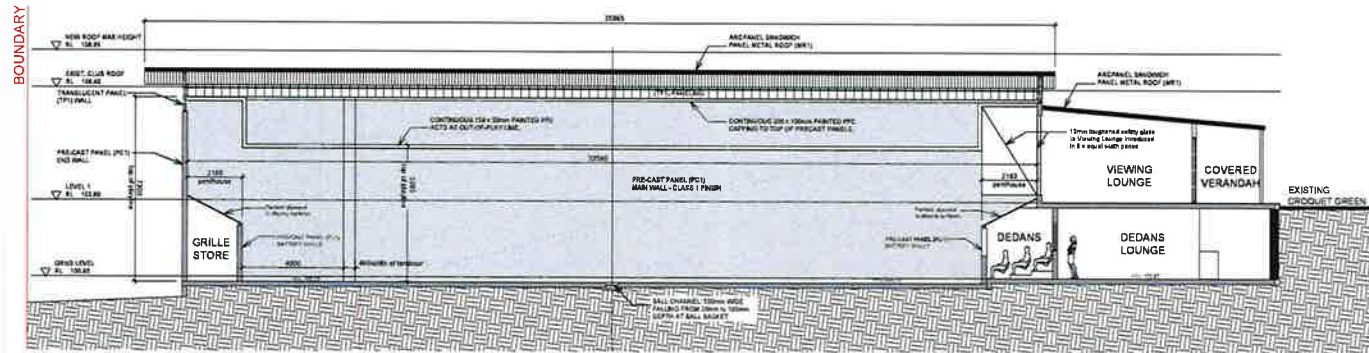


PROPOSED NEW INDOOR REAL TENNIS COURT
 AND CLUB ROOMS

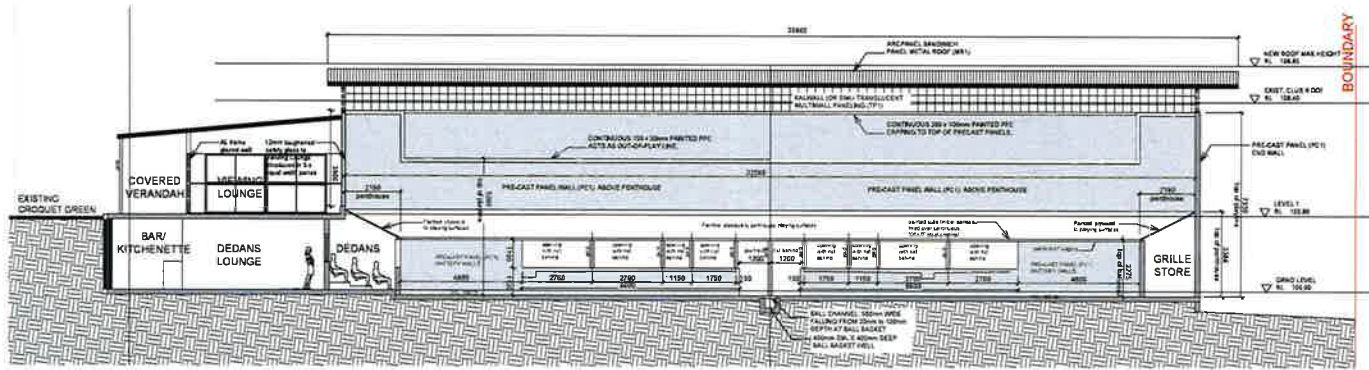
ELEVATIONS



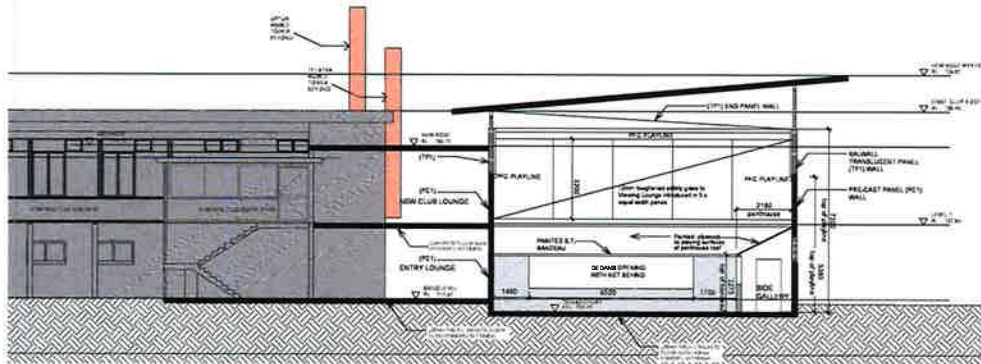
PRELIMINARY
 SET 29/8/2018



1-1 LONG SECTION THRU CLUB ROOM / TENNIS COURT - (FACING EAST)



2-2 LONG SECTION THRU CLUB ROOM / TENNIS COURT - (FACING WEST)



3-3 CROSS SECTION - (FACING SOUTH)

AT THE CHELTENHAM RECREATION CLUB
60 - 74 THE CRESENT, CHELTENHAM, NSW 2119

PREPARED BY: Sav Cremona
Tel: (+61) 405 557 660
Email: savcremona@gmail.com



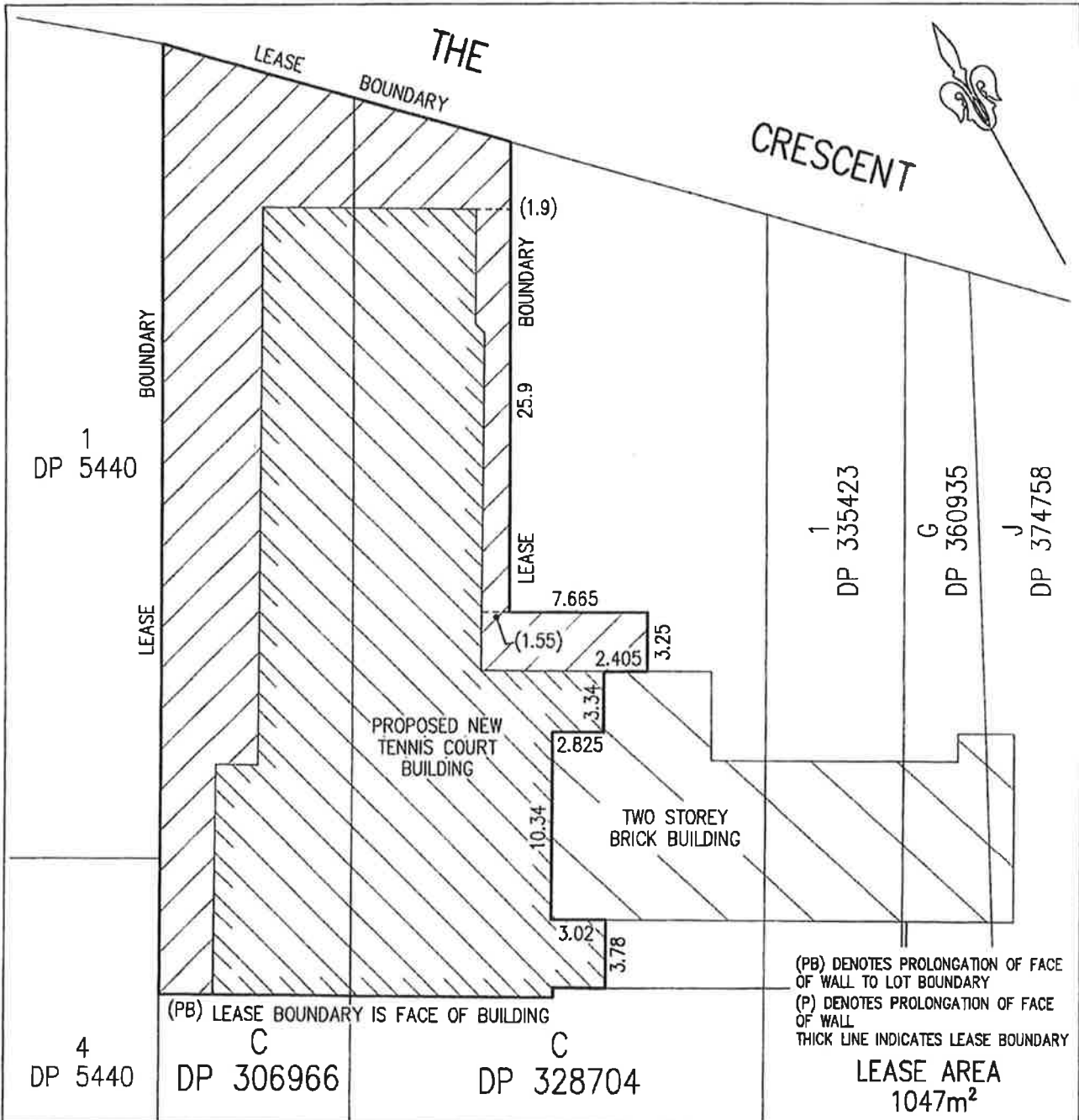
PROPOSED NEW INDOOR REAL TENNIS COURT
AND CLUB ROOMS

SECTIONS



PRELIMINARY
SET 29/8/2018

Schedule 2 - The Plan of the Premises




SIGNATURES & SEALS

EXECUTED by THE CHELTENHAM RECREATION CLUB LIMITED
ACN 000 005 890 in accordance with section 127
of the Corporations Act

Lesley Tregoning *Anthony Van dea Wall*
Signature of Director Signature of Director/Secretary

LESLEY TREGONING ANTHONY VAN DEA WALL
Name of Director Name of Director/Secretary

William Hamer
Registered Surveyor
N° 1606

 <p>TSS TOTAL SURVEYING SOLUTIONS LANE COVE CAMDEN MANLY VALE CENTRAL COAST</p>	LEASE OF PREMISES PART OF LOT C IN DP 306966 & PART OF LOT C IN DP 328704	LGA: HORNSBY
	ADDRESS: 60-74 THE CRESCENT, CHELTENHAM	LOCALITY: CHELTENHAM
	DRAWING No. 192017-1	SCALE: 1:300
		SHEET OF

Handwritten signatures and initials
CO2C

Schedule 3 - The Lease

Form: 07L
Licence: 05-11-667
Licensee: Softdocs
NO

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Revenue NSW use only

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

Auto Consol 8422-153 part being part Lot C in DP306966 and part Lot C in DP328704 being the Premises known as the Real Tennis Facility at 60-74 The Crescent, Cheltenham NSW 2119 hatched on the plan marked "Annexure B"

(B) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone and Customer Account Number if any

CODE

Reference (optional):

L

(C) LESSOR

THE CHELTENHAM RECREATION CLUB LIMITED (ACN 000 005 890)

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

SYDNEY REAL TENNIS CLUB INC (NSW ASSOCIATION NUMBER INC 9895108)

(F)

TENANCY:

(G) 1. TERM Five (5) years

2. COMMENCING DATE

3. TERMINATING DATE

4. With an **OPTION TO RENEW** for a period of N.A.
set out in clause N.A. of N.A.


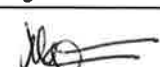
5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A nd B hereto.

8. Incorporates the provisions set out in N.A.
No. N.A.

9. The **RENT** is set out in clause 3 of Annexure A

y 
x CPGC 

DATE / /

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: THE CHELTENHAM RECREATION CLUB LIMITED (ACN 000 005 890) Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified. Authority: Section 22(1) of the Association Incorporation Act 2009

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Signing on behalf of: SYDNEY REAL TENNIS CLUB INC (NSW ASSOCIATION NUMBER INC 9895108)

Name of authorised person:

Signing on behalf of: SYDNEY REAL TENNIS CLUB INC (NSW ASSOCIATION NUMBER INC 9895108)

(I) STATUTORY DECLARATION #

I, solemnly and sincerely declare that -

- 1. The time for the exercise of option to renew/purchase in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900 and I certify this lease correct for the purposes of the Real Property Act 1900.

Made and subscribed at in the State of New South Wales on in the presence of of

[] Justice of the Peace (J.P. Number) [] Practising Solicitor

[] Other qualified witness [specify]

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person has a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was [Omit ID No.]

Signature of witness: Signature of applicant:

As the services of a qualified witness cannot be provided at lodgment, the statutory declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out witness certification. If made in NSW, cross out the text which does not apply.

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Annexure A

This and the following pages constitute Annexure A of the Lease between The Cheltenham Recreation Club Limited ACN 000 005 890 (**Landlord**) and Sydney Real Tennis Club Inc (NSW Association No. INC 9895108) ABN 39 345 792 677 (**Tenant**).

Date:

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Commercial Terms Schedule

Term	Meaning of Term
Landlord:	<p>The Cheltenham Recreation Club Limited ACN 000 005 890.</p> <p>Address: 60 -74 The Crescent, Cheltenham NSW 2119</p> <p>Email: cheltenhamrc@outlook.com</p>
Tenant:	<p>Sydney Real Tennis Club Inc (NSW Association number: INC 9895108) ABN 39 345 792 677</p> <p>Address: 71 Henrietta Street, Waverly NSW 2024</p> <p>Email: chris.cooper1963@gmail.com</p>
Premises:	Auto Consol 8422-153 part being part of Lot C in DP306966 and part Lot C in DP328704 being the Premises known as the Real Tennis Facility at 60 -74 The Crescent, Cheltenham NSW 2119 hatched on the plan in Annexure B.
Building:	The building which forms part of the Premises located on the Land.
Land:	The land contained in folio identifiers 1/5440, 1/335423, 2/5440, 3/5440, 4/5440, 5/5440, A/303812, C/306966, C/328704, G/360935 and J/374758at 60 -74 The Crescent, Cheltenham NSW 2119.
Bank Guarantee Amount:	Not applicable.
Guarantor:	Not applicable.
Term:	<p>5 years.</p> <p style="text-align: right;"><i>(Commencing Date)</i></p> <p style="text-align: right;"><i>(Terminating Date).</i></p>
Further Term:	Not applicable.
Rent Commencement Date:	The Commencing Date.
Rent:	\$1.00 inclusive of GST per annum (if demanded).
CPI Review Date:	Not applicable.
Percentage Review Date:	Not applicable.
Review Percentage:	Not applicable.

Market Review Date:	Not applicable.
Tenant's Proportion:	Not applicable.
Permitted Use:	Facility for the playing of the sport of real tennis and any associated activities, enterprises as approved by the Landlord, events and functions.

1. Definitions and interpretations

1.1. Definitions

In this Lease, unless the contrary intention appears:

- (a) **Agreement for Lease** means the Agreement for Lease between the Landlord and the Tenant pursuant to which this Lease, any Prior Leases and any Future Leases arose.
- (b) **Authorised Officer** means:
 - (i) in respect of the Tenant or any Guarantor any director or secretary, or any person from time to time nominated as an Authorised Officer by the Tenant by a notice to the Landlord accompanied by specimen signatures of all new persons so appointed, or the solicitor of the Tenant from time to time; and
 - (ii) in respect of the Landlord, any person whose title or acting title includes the word manager or cognate expressions, or any secretary or director of the Landlord, or any managing agent of the Building, or the solicitor for the Landlord from time to time.
- (c) **Authority** means any governmental, statutory, public, local government or other authority or body having jurisdiction over any part of the Land or relating to its use.
- (d) **Bank Guarantee** means an unconditional and irrevocable written guarantee with an expiry date not less than 6 months after the Terminating Date and otherwise on terms which are acceptable to the Landlord issued by an Australian bank conducting business in Sydney.
- (e) **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Sydney.
- (f) **Claims** means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a full indemnity basis).
- (g) **Common Areas** means those parts of the Building and the Land from time to time intended for common use including entrance, foyer and passageways, changing rooms, and those parts of the Building and Land from time to time designated for common use by the Landlord.

- (h) **Consumer Price Index** means:
- (i) the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics; or
 - (ii) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered vary so as to change the basis of the price index then such price index as the Landlord may select that, as nearly as practicable, serves the same purpose.
- (i) **Contaminants** means any substance or material (whether solid, liquid or gas) which is likely to:
- (i) injure the health and safety of any person;
 - (ii) injure the health of any flora and fauna;
 - (iii) breach any law (be it statute, common law or otherwise); or
 - (iv) having regard to the contamination criteria of soil or ground water identified by the Environment Protection Authority (as varied during this Lease), require site investigations or remedial action,
- and includes all substances of a hazardous nature such as fuels, chemicals, fertilisers, oils and lubricants.
- (j) **Dispute Notice** means the notice given by the Tenant disputing the Market Rent nominated in the Market Review Notice.
- (k) **Environmental Protection Legislation** means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to Contaminants, use of land, human health and safety or protection of the environment.
- (l) **GST** means the goods and services tax payable under the GST Legislation and notional GST payable by a State entity under the *Intergovernmental Agreement Implementation (GST) Act 2000 (NSW)*.
- (m) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related Acts and Regulations.
- (n) **Institute** means the New South Wales Division of the Australian Property Institute Inc.

- (o) **Lease** means this document comprising the *Real Property Act 1900 (NSW)* form, Annexure A, Annexure B and any attachments, as varied from time to time.
- (p) **Management Deed** means the management deed between the Landlord and the Tenant, existing as at the date of this Lease for the day to day management of the real tennis facility.
- (q) **Market Rent** means the amount obtained by adding the rent that can reasonably be obtained for the Premises taking into account the market rent criteria specified in this Lease at the relevant Market Review Date for the year of the Term immediately preceding the Market Review Date.
- (r) **Market Review Notice** means the notice given by the Landlord nominating the Market Rent.
- (s) **Net Lettable Area** means the net lettable area measured in accordance with the Property Council of Australia method of measurement suitable for the Premises at the time of the measurement.
- (t) **Outgoings** means the total of all outgoings paid or payable by the Landlord in respect of the Land, Building and Premises as relevant including:
- (i) **Rates, taxes and assessments:** all rates taxes charges assessments duties impositions and fees payable to any government, local government, semi government or other competent authority including land tax;
 - (ii) **Water, sewerage and waste:** all charges for and costs in relation to the supply of water, sewerage and drainage and the removal of all waste and other garbage;
 - (iii) **Insurances:** all amounts payable in respect of insurances effected from time to time by the Landlord relating to the Building, the Premises, the use and occupancy of the Building and the equipment and appliances in the Building including plate glass insurance, public risk insurance, insurance for fire and loss of rental and insurance for machinery breakdowns, explosions or terrorist attack;
 - (iv) **Air-conditioning services:** the cost of the repair, maintenance, servicing and all other running costs of the air-conditioning equipment including any reasonable fees or premiums payable to specialist contractors and the cost of replacement parts;
 - (v) **Any other services:** all proper and reasonable costs (including wages and other employment overheads) of the operation maintenance and supply of any services provided by the Landlord including caretaking, supervision, security, lifts, pest control, ventilation, the provision of light and power to Common Areas, hot and cold water and supplies for the washrooms and lavatories,

cleansing, maintaining, decorating and shrub and plant hire and landscaping and any other amenities and services;

- (vi) **Repairs:** the cost of the maintenance, repair, cleaning, servicing, redecoration and renovation of the Building and all carpets, window coverings, fixtures, fittings, plant and equipment in the Building and the Premises or servicing the Building including amounts paid under proper and reasonable service and maintenance contracts including repairs and maintenance of a structural nature;
 - (vii) **Essential Services:** the cost of all necessary inspections of essential services and fire safety and the preparation of certificates and reports including an annual Fire Safety Statement under the *Environmental Planning and Assessment Regulation 2000 (NSW)*;
 - (viii) **Management fees:** all reasonable costs incurred in management (including environmental management and obtaining the relevant energy certificates such as NABERs and BEECs), control and administration (including the costs of providing audited statements and any bank charges) whether such management, control and administration is performed by the Landlord or by others or if applicable all fees payable by the Landlord to any managing agents for the management of the Premises;
 - (ix) **Signage:** all reasonable costs incurred by the Tenant in installing signage on the Premises for the purposes of advertising the business activities of the Premises, including the maintenance and repair, as reasonably required, from time to time of the signage;
 - (x) **Statutory or regulatory:** all taxes (excluding income tax and capital gains tax), charges, assessments, duties, impositions, levies, surcharges, fees, and all other amounts payable at any time and from time to time to any government, local government, statutory authority or authorised corporation in respect of receipts of both rent and other moneys under this Lease; and
 - (xi) **Utility costs:** all utility costs incurred by the Tenant in its use of the Premises including all charges for and costs in relation to the supply of electricity and gas or any other utility.
- (u) **Tenant's Invitees** means the Tenant's employees, agents, contractors, clients, customers, visitors and other persons on the Premises with the consent of the Tenant.
- (v) **Term** means the period commencing with the Commencing Date and ending on the Terminating Date, and where applicable, the period of holding over under clause 2.3.

1.2. Interpretation

(a) **Number, gender and corporation**

Words importing the singular number include the plural and vice versa, words importing a person include a corporation and vice versa and each gender includes every other gender.

(b) **Jointly and severally**

Any provision of this Lease to be performed by two or more persons binds those persons jointly and each of them severally.

(c) **Bodies and Associations**

References to authorities, institutes, associations and bodies, whether statutory or otherwise, will in the event of any such organisation ceasing to exist, being reconstituted, renamed or replaced or the powers or functions or any such organisation being transferred to any other organisation, be deemed to refer respectively to the organisation established or constituted in lieu of any such organisation.

(d) **Statutes and Regulations**

Reference to a statute or ordinance includes all regulations under and amendments to that statute or ordinance whether by subsequent statute or otherwise and a statute or ordinance passed in substitution for the statute or ordinance.

(e) **Headings**

Headings and any marginal notes have been inserted for convenience only and do not in any way limit or govern the construction of the terms of this Lease. Each numbered section is a Part as specified in the table of Contents.

(f) **Monthly and Yearly**

A reference to month and year means respectively calendar month and calendar year.

(g) **Entire Agreement**

This Lease, the Agreement for Lease, any Prior Leases and any Further Leases constitutes the entire agreement of the parties on everything connected with the subject matter of this Lease and supersedes all prior agreements, understandings and negotiations in relation to those matters. Each party agrees and represents that it has not relied on any prior representations with respect to the subject matter of this Lease except those referred to in this clause.

(h) **Counterparts**

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

(i) **Business Days**

Where under or pursuant to the Lease the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or public holiday in the State or place in which the Premises are situated, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

(j) **Include**

The word *include* (in any form) when introducing one or more specific items does not limit the meaning of the general words to those items or to items of a similar kind.

(k) **Rule of Construction**

In the interpretation of this Lease no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Lease.

(l) **Severance**

If a term of this Lease is or becomes wholly or partly void, voidable or unenforceable the Landlord may at its option either:

- (i) terminate this Lease; or
- (ii) convert this Lease into a tenancy which may be terminated at the will of the Landlord but not of the Tenant; or
- (iii) sever the offending term without affecting the enforceability or validity of the remainder of the Lease.

(m) **Defined Terms**

Each term specified in the Commercial Terms Schedule has the meaning specified for it in the Commercial Terms Schedule. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

(n) **Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (i) must be in writing addressed to the intended recipient at the address or email address specified in the Commercial Terms Schedule or the address last notified by the intended recipient to the sender;
- (ii) must be signed by the sender or if a company, by its Authorised Officer;
- (iii) will be taken to have been served:
 - (A) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;
 - (B) in the case of express mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority;
 - (C) if it is sent by email to the person's email address, when the sender receives a delivery receipt confirming that the email has been delivered to the person, on that day, unless:
 - (I) the email is sent after 5.00pm on a Business Day, or on a day that is not a Business Day (both the day and time being in the place of receipt) in which case the notice will be regarded as having been received the following Business Day;
 - (II) the sender receives an "out of office" message, or any other message stating that the recipient is unavailable, in which case the notice will be taken to be received 2 Business Days after the email was sent; or
 - (III) the sender does not receive either a delivery receipt or an "out of office" message (or any other message stating that the person is unavailable), in which case the notice will be taken to be received 4 Business Days after the date the email was sent;

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place; and

- (iv) if the Landlord transfers its interest in the Land or if the Tenant assigns or transfers its interest in this Lease to a third party then the address for service as disclosed in clause 1.2(n)(i) will be amended to reflect the details of the third party acquiring the interest in the Land or Lease as advised by the third party.

(o) **Lease ends**

A reference to the end of this Lease is a reference to the expiration of the Term or its earlier determination by default or otherwise.

(p) **Continuing Obligations**

The obligations of the parties arising prior to the end of this Lease continue until they are fulfilled.

(q) **Obligations and Payments of Tenant**

The Tenant must perform the obligations of the Tenant under this Lease at the expense and risk of the Tenant. An amount to be paid under this Lease is due for payment on the earlier of demand or the date specified in the notice or invoice.

(r) **Implied Covenants**

- (i) The covenants, powers and provisions implied in leases by virtue of Sections 84, 84A, 85 and 133 of the *Conveyancing Act 1919 (NSW)* do not apply to this Lease.
- (ii) The employment in this Lease of words in any of the forms or words contained in the first column of Part II of Schedule IV of the *Conveyancing Act 1919 (NSW)* does not imply any covenant under Section 86 of that Act.
- (iii) Any present or future legislation or any implied term (including a duty of good faith or anything similar) which operates to vary the obligations of the Tenant in connection with this Lease with the result that the Landlord's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded, except to the extent that its exclusion is prohibited or rendered ineffective by law.

2. Term and further terms

2.1. Term

The Landlord leases the Premises to the Tenant for the Term.

2.2. End of Term and Right of First Refusal

At the end of the Term:

- (a) the Landlord and the Tenant must consult and use their best endeavours to negotiate a further lease of the Premises;

- (b) the Landlord must not lease the Premises to another party unless the Landlord first offers a new lease to the Tenant and gives the Tenant a lease proposal that contains the terms of the Landlord's Offer to grant the Tenant a lease of the Premises ('**Lease Proposal**');
- (c) the Landlord's Offer must be accompanied by a lease reflecting the terms contained in the Lease Proposal ('**Landlord's Offer**').
- (d) if the Tenant does not give to the Landlord:
 - (i) A notice accepting the Landlord's Offer; and
 - (ii) A lease in the form that the Landlord issued to the Tenant duly signed by the Tenant as Lessee,

within 20 Business Days (time being of the essence) after service of the Landlord's Offer, then the Tenant will be deemed to have rejected the Landlord's Offer and the Landlord may at any time thereafter, lease the Premises to any third party at a rental amount not less than the rental amount contained in the Landlord's Offer.

2.3. Holding Over

If the Tenant continues to occupy the Premises after the Term with the Landlord's consent then:

- (a) the Tenant occupies the Premises under a monthly tenancy which either party may end by giving 1 months' notice expiring on any day; and
- (b) this tenancy will be on the same terms as this Lease so far as they apply to a periodic tenancy with Rent being the Rent payable immediately prior to the Terminating Date.

3. Rent

3.1. Rent

- (a) The Tenant must pay to the Landlord without deduction or set off the Rent with the first payment due on the Rent Commencement Date.
- (b) Payments must be made to the Landlord or the Landlord's agent as the Landlord may direct including by bank cheque, direct deposit or electronic transfer.

4. Outgoings and expenses

4.1. Landlord Responsible for all Outgoings

- (a) The Landlord will be responsible for payment of all:
 - (i) Outgoings; and
 - (ii) maintenance and repair of the Premises other than in respect of any building defects associated with workmanship or materials in the original construction of the Building carried out by the Tenant pursuant to the Agreement for Lease, during the term.
- (b) The Tenant must provide to the Landlord, within 7 days of receipt, any notices for Services or Utilities issued to the Tenant for payment by the Landlord ("**Service or Utility Notice**").
- (c) The Landlord must attend to payment of any Service or Utility Notice by the due date stipulated on that notice and must immediately serve on the Tenant evidence of payment.
- (d) If the Landlord fails to pay a Service or Utility Notice referred to in clause 4.1(a) by its due date, the Landlord will be responsible for all penalties and interest accrued on that Service or Utility Notice as a result of the delay in payment.
- (e) If the Landlord fails to pay a Service or Utility Notice by its due date, the Tenant may pay them and recover these payments from the Landlord as a debt due and payable to the Tenant.

4.2. Tenant Expenses

Unless expressly stated otherwise in the Management Deed, the Tenant will be responsible for payment of only the following expenses:

- (a) maintenance, repairs and rectification works which become necessary in respect of building defects associated with workmanship or materials in the original construction of the Building carried out by the Tenant pursuant to the Agreement for Lease;
- (b) any separate phone line or website costs associated with the Tenant; and
- (c) any international or national real tennis association membership fees.

4.3. Legal Costs

- (a) The Landlord and the Tenant agree to:

- (i) equally share the Tenant's legal costs and disbursements of preparing this Lease; and
- (ii) each bear their own legal costs and disbursements for and incidental to the negotiation, amendment and execution of this Lease.

(b) The Tenant must pay the registration fees of this Lease.

5. Goods and Services Tax

5.1. Payments Exclusive of GST

All payments or other consideration paid or payable under this Lease are exclusive of GST.

5.2. Payment of GST

In addition to payment for a supply in connection with this Lease payable by the Tenant to the Landlord on which GST is paid or payable, the Tenant must pay, at the same time and in the same manner, the amount of the GST which is paid or payable in respect of that supply.

5.3. Tax invoice

The Landlord must provide the Tenant with a tax invoice as prescribed in the GST Legislation prior to the date any payment is due to the Landlord.

5.4. Late payment

If the Landlord becomes subject to penalties or interest resulting from late payment of GST because of the Tenant's failure to comply with this Part, then the Tenant must pay on demand an additional amount equal to the amount of those penalties and interest.

6. Use of Premises

6.1. Permitted Use

The Tenant must only use the Premises for the Permitted Use.

6.2. No warranty as to Use

The Landlord does not warrant that the Premises is suitable for or may be used for the Permitted Use.

6.3. Restrictions on Use

The Tenant must not and must not permit the Tenant's Invitees to:

- (a) use the Premises as a residence or for any activity that is dangerous, offensive, noxious or illegal or that may become a nuisance for any neighbouring property or other occupants of the Building including the Landlord;
- (b) overload the floors or walls of the Premises, the electrical system or any other services to the Premises;
- (c) damage the Premises or the Building;
- (d) make any alterations or additions to the Premises or the Building without the Landlord's prior consent (which must not be unreasonably withheld or delayed) unless the proposed alteration or addition affects the structure of the Building, in which case the Landlord can withhold its consent in its absolute discretion);
- (e) make any alterations or additions (other than minor changes) to the Tenant's fixtures, fittings, equipment or furnishings within the Premises without the Landlord's prior consent (which must not be unreasonably withheld or delayed, unless the proposed alteration or addition affects the structure of the Building, in which case the Landlord can withhold its consent in its absolute discretion);
- (f) use or store inflammable or explosive materials, liquids or gas in the Building;
- (g) do anything that may prejudice, invalidate or increase the premium payable for an insurance policy covering the Premises;
- (h) paint, affix or erect on the interior or exterior of the Premises any notices, advertisements or signs without the prior written approval of the Landlord (which must not be unreasonably withheld or delayed);
- (i) obstruct or otherwise improperly interfere with the use of the Common Areas;
- (j) improperly interfere with the fittings, equipment and services (including plumbing, air-conditioning and fire services) serving the Premises or forming part of the Building or otherwise provided by the Landlord;
- (k) smoke in the Premises or the Building;
- (l) hold any auction, bankruptcy or fire sale; or
- (m) throw, place or allow to fall any waste, rubbish or debris on the Building or the Land other than in appropriate receptacles.

6.4. Requirements of Authorities

- (a) The Tenant must comply and ensure the Tenant's Invitees comply with all laws and all notices, orders and directives from any Authority relating to the use or occupation of the Premises, obtain the consents or licences needed, comply with any conditions of consent and keep current any licences or registrations needed for the use of the Premises by the Tenant PROVIDED THAT the Tenant is not required to effect structural works unless:
 - (i) they are directly attributable to the Tenant's business in the Premises; or
 - (ii) they are directly attributable to building defects associated with workmanship or materials in the original construction of the Building carried out by the Tenant pursuant to the Agreement for Lease.
- (b) The Tenant must provide promptly to the Landlord a copy of any legal notice in respect of the Premises notified to the Tenant.

6.5. Tenant's obligations

The Tenant must:

- (a) lock all exterior doors and windows when the Premises are not occupied and be responsible for the security of the Premises;
- (b) comply with and ensure the Tenant's Invitees comply with all building rules issued by the Landlord from time to time, including the Landlord's directions in relation of garbage and recycling;
- (c) give notice to the Landlord promptly of any damage, accident to or defect in the Premises or any circumstances likely to cause any damage or injury of which the Tenant is aware;
- (d) participate and direct the Tenant's Invitees to participate in emergency evacuation procedures; and
- (e) store and remove all waste and garbage as directed by the Landlord, acting reasonably.

6.6. Common Areas

The Tenant and the Tenant's Invitees may use:

- (a) the Common Areas; and
- (b) The car park facilities located on the Land,

in common with the Landlord, the Landlord's employees, agents and contractors, other lessees or licensees and their employees, agents, contractors, clients, customers and visitors and other occupiers of the Building and persons authorised by them.

6.7. Tenant to install signage

The Tenant may install signage for the purposes of advertising the business activities of the Premises (or sponsors of the Tenant) on the internal and external surfaces of the Premises or Building in a location agreed to by the Landlord, acting reasonably.

7. Tenant's environmental obligations

7.1. Environmentally sensitive activities

The Tenant must not carry on any activities on the Premises which may cause contamination to the Premises or surrounding environment.

7.2. Comply with Environmental Protection Legislation

The Tenant must, in its use of the Premises, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

7.3. Not permit spills

The Tenant must not spill or deposit any Contaminants, or permit any Contaminants to escape in any other way into or on the Premises, drainage or surrounding environment.

7.4. Notify of and clean up spills

Where a spill of Contaminants has occurred caused by the Tenant, the Tenant must:

- (a) immediately notify the Landlord, the Environment Protection Authority and any other appropriate Authority; and
- (b) clean up the spill and do everything necessary to minimise harm.

7.5. Comply with Notices

The Tenant must promptly comply with any notice, order, direction or requirement of the Landlord and of any Authority in relation to any Contaminant:

- (a) to ensure that there is no leakage, spillage or other escape of any Contaminant into, on or from the Premises; or
- (b) for the disposal, removal or the rendering safe of any Contaminant, spill or deposit which has otherwise escaped into, on or from the Premises caused by the Tenant.

8. Maintenance and repair

8.1. Landlord's obligation to repair

The Landlord must:

- (a) keep, maintain and repair the Premises, including all fixtures and fittings, surfaces and sections specific to the Premises and the surrounding areas of the Premises, including the Building and Land; and
- (b) keep the Building and Premises water tight and in a structurally sound condition, except to the extent that it is the responsibility of the Tenant under clauses 4.2(a), 6.4(a) or 8.2(a).

8.2. Tenant's further obligations

The Tenant must:

- (a) rectify any building defects associated with workmanship or materials in the original construction of the Building carried out by the Tenant pursuant to the Agreement for Lease;
- (b) keep the Premises tidy and free of all rubbish and debris;
- (c) dispose of any rubbish in the appropriate bins and as directed by the Landlord; and
- (d) keep the Premises free from pests including rodents, cockroaches and termites.

8.3. Landlord to maintain air-conditioning

- (a) Subject to clause 8.2(a), the parties acknowledge and agree that the air-conditioning system will be serviced and maintained by the Landlord during the Term.
- (b) If the Landlord requires access to the Premises for the purpose of servicing the air-conditioning system, the Tenant will grant the Landlord access to the Premises provided the Landlord gives the Tenant 1 Business Days' prior notice.

9. Quiet enjoyment and access

9.1. Quiet enjoyment

Subject to the rights and obligations of the Landlord under this Lease and the Management Deed, the Tenant may use and occupy the Premises during the Term without interference by or through the Landlord, subject to the Landlord's rights reserved under this Lease. The Tenant and the Tenant's Invitees may access the Premises 7 days a week, 24 hours per day.

9.2. Access by Landlord

Subject to the rights and obligations of the Landlord under this Lease and the Management Deed, the Tenant must, upon receiving reasonable notice, except in an emergency when no notice is required, give the Landlord or anyone authorised in writing by the Landlord access to the Premises at any reasonable time for the purpose of:

- (a) inspecting the condition of the Premises;
- (b) doing anything that the Landlord can or must do under this Lease or must do by law;
- (c) undertaking maintenance, repairs, renovations and redecorating of the Building; and
- (d) assisting in any emergency or for security or safety.

9.3. Superior estates

Any person who has or acquires an interest in the Premises superior to or concurrent with the Landlord or who is otherwise entitled to receive the Rent payable under the Lease by operation of law or otherwise will have the benefit of the obligations on the part of the Tenant under the Lease and the Tenant must permit that person to exercise the Landlord's rights under this Lease including without limitation inspection, repair and rectification.

9.4. Common Areas and Land

- (a) The Landlord must use reasonable endeavours to:
 - (i) keep all Common Areas including fire exits in good order and repair and in a clean and tidy condition;
 - (ii) keep the Premises and the Building in a wind and watertight condition having regard to the age and condition of the Premises and the Building at the Commencing Date; and
 - (iii) effect and keep the Premises and the Building in a good structural repair and condition having regard to the age and condition of the Premises and the Building at the Commencing Date,except to the extent it is the responsibility of the Tenant under clauses 4.2(a), 6.4(a) or 8.2(a).
- (b) The Landlord will be permitted to develop the Land surrounding the Premises provided that the reasonable use of the Premises by the Tenant and the Tenant's Invitees is not interrupted to other than a minor extent.

10. Assignments, subleases and mortgages

10.1. Prohibited dealings

The Tenant must not assign, sublet, licence, part with possession or otherwise deal with any part of the Premises or this Lease without the Landlord's consent which must not be unreasonably withheld.

10.2. Assignment and sublease

Notwithstanding the previous clause, the Tenant may assign this Lease or sublet part of the Premises only with the prior consent of the Landlord which will not be unreasonably withheld or refused if:

- (a) before the Tenant assigns or sublets:
 - (i) the Tenant is not in breach of this Lease;
 - (ii) the proposed new lessee or sub-lessee is shown to the satisfaction of the Landlord to be respectable, responsible and financially sound;
 - (iii) on an assignment, the proposed new lessee is shown to the satisfaction of the Landlord to be capable of adequately carrying on the business permitted under the Lease;
 - (iv) the proposed new lessee or sub-lessee executes a deed in a form required by the Landlord agreeing to be bound by this Lease;
 - (v) the proposed new lessee or sub-lessee executes a deed in the form required by the Landlord agreeing to be bound by the Management Deed or in the case of a new lessee, in respect of which the Management Deed is novated to the new lessee; and
 - (vi) the Tenant pays the Landlord's reasonable costs of giving the consent.
- (b) in the case of an assignment, all Future Leases are simultaneously assigned to the proposed new lessee.

10.3. Change of control of Tenant

Where the Tenant is a corporation other than a listed public company, a change in shareholding (including any variation in the beneficial ownership of the shares) of the Tenant that gives control of the Tenant to a different person or group of persons will be deemed to be an assignment of this Lease with the proposed new shareholders, beneficial owners or management treated as the proposed new lessee.

10.4. **Change of Landlord**

If the Landlord transfers its interest in the Land or grants a concurrent lease over the Premises the Tenant must within 21 days after the request of the Landlord at the Landlord's cost:

- (a) enter into those documents the Landlord may reasonably require to enable the transferee or lessor in its name to enforce the benefits of the Tenant's obligations under this Lease; and
- (b) vary this Lease to include the trust or other limitation of liability clause required by the transferee or lessor provided the clause is substantially the same as the relevant clause in the purchase contract or concurrent lease.

11. **Insurance, release and indemnity**

11.1. **Tenant's insurance**

The Tenant must keep current an insurance policy covering:

- (a) the Tenant's property in the Premises for its full insurable value and must produce at the request of the Landlord evidence of this insurance; and
- (b) any insurances required specific to the Permitted Use of the Premises.

11.2. **Insurance terms**

All insurance policies must:

- (a) be with a reputable insurer acceptable to the Landlord;
- (b) be for such amounts and cover such risks as are reasonably required by the Landlord and contain such conditions as are reasonably acceptable to the Landlord;
- (c) have no unusual exclusions, endorsements or alterations unless consented to by the Landlord; and
- (d) have endorsed upon them the rights and interests of the Landlord.

If any loss or damage arises from any cause covered by the Tenant's insurance, the Tenant must immediately apply for the insurance money and expend it together with the Tenant's money to promptly rectify the loss or damage.

11.3. Landlord's insurance

The Landlord must keep current an insurance policy covering:

- (a) the Premises for public risk for \$20,000,000 for each accident or event or for such higher amount as required and noting the Tenant's interest under the policy; and
- (b) the full insurable value on a replacement basis against all glass (including plate glass) in or enclosing the Premises,

and must produce at the request of the Tenant evidence of this insurance.

11.4. Assumption of risk by Tenant

The Tenant occupies the Premises and carries out building work in the Premises at its own risk. All property of the Tenant in the Premises is at the sole risk of the Tenant.

11.5. Tenant's release and indemnity

The Tenant cannot make a Claim against the Landlord and releases the Landlord from and indemnifies it against all Claims for breach of statutory duty, damages, loss, injury or death which:

- (a) occur in the Premises;
- (b) arise from the use of the Premises or the Common Areas by the Tenant or the Tenant's Invitees; or
- (c) occur in connection with any construction work undertaken by or on behalf of the Tenant on or for the Premises,

except to the extent that it is caused by the wilful act or omission or negligence of the Landlord, its employees, agents or contractors or in circumstances where the Landlord is in possession of the Premises.

11.6. Continuation of indemnities

The indemnities contained in this Lease apply after the end of this Lease in respect of any act occurring before the end of this Lease. The indemnities apply notwithstanding that the Landlord or the Lease authorised or required the Tenant to undertake or perform the activity giving rise to the Claim.

12. Damage and abatement

12.1. Rent abatement

If the Premises is damaged and as a result the Tenant cannot use or gain access to the whole or a significant part of the Premises, then from the date the Tenant notifies the Landlord of the damage:

- (a) a proportionate part of the Rent, Outgoings and other money payable to the Landlord under this Lease abates according to the nature and extent of the damage until the damage is reinstated;
- (b) the Landlord has 3 months to notify the Tenant that it will reinstate the Premises and if that notice is not given or the Landlord fails to carry out the reinstatement works within a reasonable time after the notice is given, then the Tenant may by not less than 1 months' notice to the Landlord terminate this Lease; and
- (c) the Tenant's obligations to repair are suspended in respect of the part of the Premises damaged until the damage is reinstated.

This clause does not apply to damage caused or substantially contributed to by the Tenant or the Tenant's Invitees or where the insurer for any insurance policy covering the Premises properly refuses indemnity or substantially reduces the sum payable under the policy because of any act or default of the Tenant or the Tenant's Invitees.

12.2. Landlord may reinstate or terminate

If the Landlord considers the damage to the Premises renders it impractical to reinstate the Premises, the Landlord may by giving not less than 1 months' notice to the Tenant to terminate the Lease.

12.3. Termination

Termination under this clause does not affect either party's accrued rights before termination or a party's right (if any) to claim damages in respect of the termination of this Lease when the other party's wrongful act or omission has caused or contributed to the damage giving rise to the termination.

12.4. Dispute resolution

- (a) A dispute in respect of the abatement amount under this part must be determined by a valuer nominated by the President of the Institute at the request of either party. The valuer must be engaged by the party requesting nomination and must be instructed to make his determination within 21 days after his appointment.

- (b) The valuer appointed pursuant to this clause must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) give a written determination with reasons;
 - (iii) have substantial experience in assessing buildings of a similar type in comparable locations to the Premises; and
 - (iv) be a full member of not less than 5 years standing of the Institute and hold a licence to practice as valuer for the kind of premises demised by this Lease and be active in this market at the time of his appointment.
- (c) The cost of the determination must be paid by the parties equally unless otherwise decided by the valuer.

13. Default

13.1. Default and termination

The Tenant will be in default under this Lease if:

- (a) the Tenant has repudiated this Lease;
- (b) rent or any other money payable by the Tenant under this Lease is more than 14 days overdue for payment and the Landlord gives the Tenant not less than 14 days notice requiring payment;
- (c) the Tenant fails to comply with any obligation of the Tenant under this Lease within a reasonable time (having regard to the nature of the obligation) after the Landlord gives the Tenant notice requiring compliance; or
- (d) the Tenant:
 - (i) being a corporation – resolves to or enters into any arrangement for the benefit of creditors, resolves to or is wound up or internally reconstructed, takes any step to obtain protection or is granted protection from its creditors, becomes an externally administered body corporate, becomes insolvent or anything analogous or having a substantially similar effect occurs; or
 - (ii) being an individual – enters into an assignment or arrangement for the benefit of creditors, becomes bankrupt or dies,

and then the Landlord may enter and take possession of the Premises or by notice to the Tenant terminate the Lease.

13.2. **Insolvency or bankruptcy**

The Tenant must ensure that:

- (a) being a company, it does not resolve or enter into any arrangement for the benefit of creditors, resolve to or be wound up or internally reconstructed, take any step to obtain protection from creditors become an externally administered body corporate, become insolvent or any thing analogous or having a substantially similar effect; or
- (b) being an individual he or she does not enter into an assignment or arrangement for the benefit of creditors or become bankrupt.

13.3. **Damages**

- (a) The essential terms of this Lease include the Tenant's obligations:
 - (i) concerning rectification of building defects associated with workmanship or materials in the original construction of the Building carried out by the Tenant pursuant to the Agreement for Lease;
 - (ii) concerning the use of the Premises; and
 - (iii) relating to the assignment of or dealing with the Lease.
- (b) If there is a breach of an essential term, the Landlord can recover damages for all losses over the entire period of the Lease up to the Terminating Date but must do every reasonable thing to mitigate those losses and try to lease the Premises to another lessee on reasonable terms.
- (c) The Landlord can recover damages even if:
 - (i) the Landlord accepts the Tenant's repudiation of this Lease;
 - (ii) the Landlord ends this Lease by entering and taking possession of any part of the Premises or terminates this Lease by notice;
 - (iii) the Tenant abandons possession of the Premises; or
 - (iv) a surrender of this Lease occurs.

13.4. **Waiver**

- (a) A provision or a right created under this Lease may not be waived or varied except in writing signed by the party to be bound. No failure to exercise and no delay in exercising any right, power or remedy under this Lease or any custom or practice existing between the parties in relation to this Lease operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further

exercise of that or any other right, power or remedy. No waiver by a party of one breach of a provision under this Lease by the other party is a waiver of another breach of that provision or any other.

- (b) The demand of or subsequent acceptance of any money under this Lease by a party is not to be deemed a waiver of any preceding breach of this Lease by the other party, except only in relation to the failure to make that particular payment when due.
- (c) Money tendered by the Tenant and accepted by the Landlord may be applied in the manner the Landlord decides.

14. Termination

14.1. Tenant to yield up and remove its property

When this Lease ends (unless the Tenant becomes a lessee of the Premises under a new lease):

- (a) the Tenant is not required to remove any fixtures and fittings or reinstate the Premises to the condition it was in as at the Commencing Date; and
- (b) the Tenant must remove its personal belongings;
- (c) the Landlord will retain title to the fixtures and fittings left in the Premises.

14.2. Abandoned property

Anything not removed within 14 days after the end of this Lease becomes the property of the Landlord who can keep it or remove and dispose of it and recover from the Tenant the cost of removal, making good and disposal.

15. Interdependent Leases

15.1. Notwithstanding any other provision of this Lease, the parties acknowledge and agree that this Lease is interdependent with all other Leases granted by the Landlord to the Tenant of the Premises which have a term which ends before the Commencing Date of this Lease ("**Prior Leases**") or which have a term which commences after the Termination Date of this Lease ("**Future Leases**") but only in the following respects:

- (a) any right of termination on the part of the Landlord of any of the Prior Leases or Future Leases will give the Landlord a right of termination of this Lease;
- (b) any right of termination on the part of the Tenant of any of the Prior Leases will give the Tenant a right of termination of this Lease;

- (c) any right of termination on the part of the Landlord under this Lease will give the Landlord the right to terminate all of the Prior Leases and the Future Leases; and
- (d) any right of termination on the part of the Tenant under this Lease will give the Tenant the right to terminate all of the Future Leases.

16. Termination prior to Commencing Date¹

The Tenant can terminate this Lease only if the Tenant gives the Landlord a notice of termination not more than 12 months before the Commencing Date and not less than 3 months before the Commencing Date. The Tenant and Landlord thereafter release each other from all Claims under this Lease (except for any antecedent breach).

¹ This clause 16 will only appear in the second and subsequent Leases.

Schedule – Rules and Regulations

1. The Tenant must not obstruct the Common Areas.
2. The Tenant must not cover any light, sky-lights, windows or other means of illuminating the Common Areas.
3. The Tenant must not allow any article whatsoever to fall from the Premises and will not place any article on any ledge or other like part of the Premises.
4. The Tenant must endeavour to keep the Premises and any property in the Premises safe from theft and will keep the Premises secure when the Premises are not in use.
5. The Tenant must not allow any keys to the Premises to come into possession of any other Person and on the termination of this Lease will deliver all keys to the Landlord. The Tenant must promptly advise the Landlord of any keys that are lost or damaged or otherwise no longer in the Tenant's control.
6. No rubbish or waste will at any time be burned on the Premises.
7. The toilets and other waste apparatus used by the Tenant must not be used for any purpose other than for which they were constructed and no unsuitable substances will be thrown in the toilets or other waste apparatus. Any damage resulting to the toilets and waste apparatus from misuse by the Tenant must be made good by the Tenant.
8. The Tenant must not allow smoking in the Premises.

EXECUTED AS A DEED

Landlord

Certified correct for the purposes of the *Real Property Act 1900* and **EXECUTED** for and on behalf of **The Cheltenham Recreation Club Limited ACN 000 005 890** in accordance with Section 127(1) of the *Corporations Act 2001*:

Signature of Director

Signature of Director

Name of Director

Name of Director

Tenant

Certificated correct for the purposes of the *Real Property Act 1900* and **EXECUTED** for and on behalf of **Sydney Real Tennis Club Inc NSW Association Number: INC 9895108 ABN 39 345 792 677** in accordance with section 22() of the *Associations Incorporations Act 2009 (NSW)*

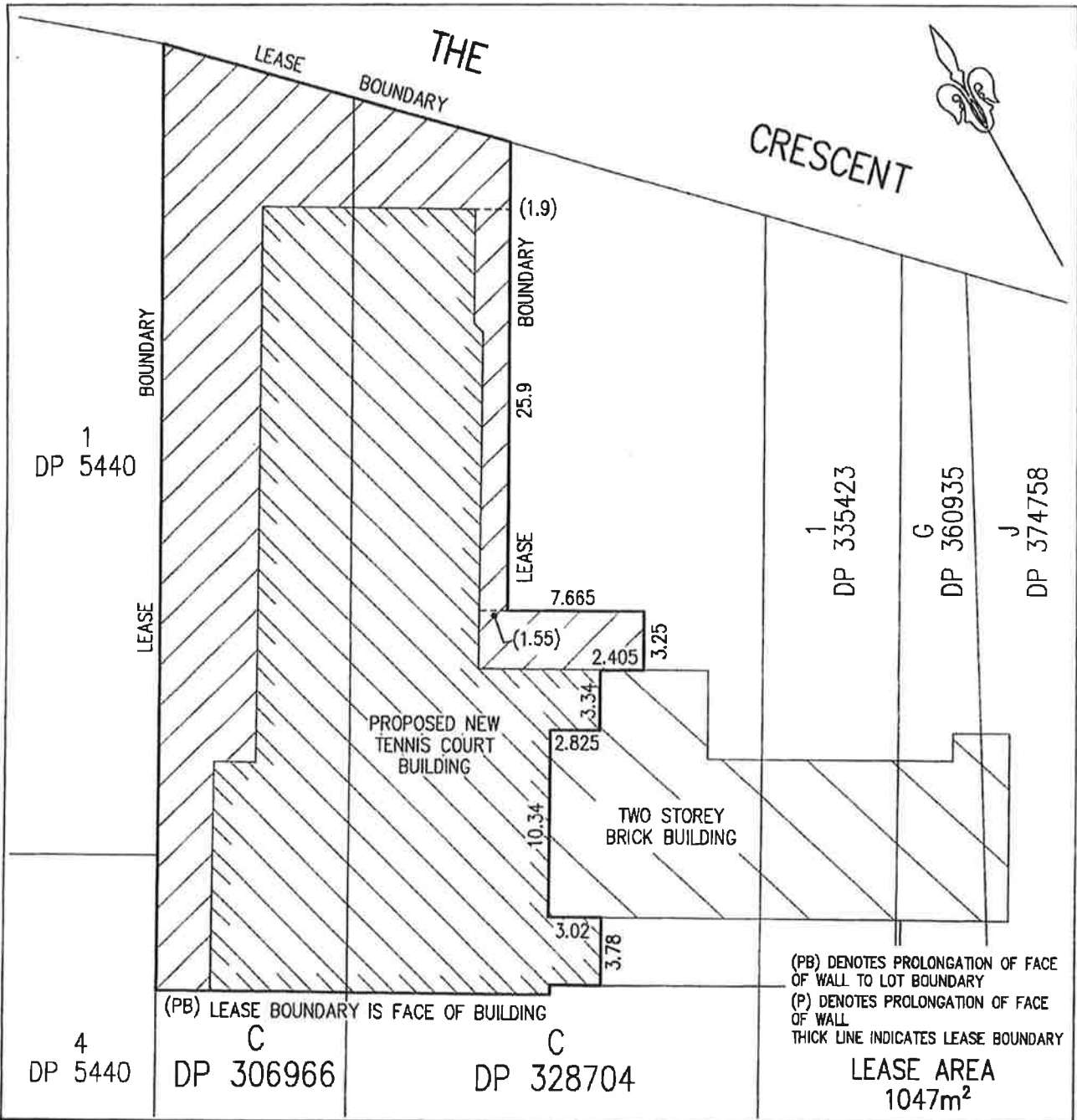
Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

Annexure B – Plan of Premises




SIGNATURES & SEALS

EXECUTED by THE CHELTENHAM RECREATION CLUB LIMITED
 ACN 000 005 890 in accordance with section 127
 of the Corporations Act:

Lesley Tregoning *William Hamer*
 Signature of Director Signature of Director/Secretary

LESLEY TREGONING **WILLIAM HAMER**
 Name of Director Name of Director/Secretary

William Hamer
 Registered Surveyor
 N° 1606

 <p>TSS TOTAL SURVEYING SOLUTIONS LANE COVE CAMDEN MANLY VALE CENTRAL COAST</p>	<p>LEASE OF PREMISES PART OF LOT C IN DP 306966 & PART OF LOT C IN DP 328704</p>	<p>LGA: HORNSBY</p>	
	<p>ADDRESS: 60-74 THE CRESCENT, CHELTENHAM</p>	<p>LOCALITY: CHELTENHAM</p>	
	<p>DRAWING No. 192017-1</p>	<p>SCALE: 1:300</p>	
		<p>SHEET OF</p>	<p>DATE: 3/9/2019</p>

Management Deed

**in relation to the operation of the
real tennis facility at 60-74 The
Crescent, Cheltenham NSW**

The Cheltenham Recreation Club Ltd ACN 000 005 890

Sydney Real Tennis Club Inc NSW Association Number: INC 9895108

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Dated 24 October 2019

Parties

The Cheltenham Recreation Club Ltd ACN 000 005 890

Address: 60-74 The Crescent, Cheltenham in the State of New South Wales

Email: cheltenhamrc@outlook.com

Attention: Bain Shenstone
(CRC)

Sydney Real Tennis Club Inc NSW Association Number: INC 9895108

Address: 71 Henrietta Street, Waverly in the State of New South Wales

Email: registrar@sydneyrealtennis.com.au

Attention: Chris Cooper
(SRTC)

Background

- A. The Parties have entered into an agreement to lease the Real Tennis Facility dated on or about the date of this Deed (**Agreement to Lease**).
- B. Subject to the terms of the Agreement to Lease, CRC is to grant SRTC a lease of the Real Tennis Facility on the terms of the Leases as defined in the Agreement to Lease.
- C. Under the Leases, SRTC has exclusive rights and responsibilities in respect of the Real Tennis Facility.
- D. SRTC has agreed to appoint CRC to provide the Management Services for the Real Tennis Facility on the terms and conditions set out in this Deed.

1. Definition and Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires, the following terms (both singular and plural) will have the respective meanings assigned to them:

Term:	Definition:
Authority	means any government, semi-government, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity, authorised private certifier or other body or person authorised by any legislation and includes the Local Government.
Casual Play Exemptions	means any policies, procedures, rules, or processes CRC have in place, or implement, from time to time, to allow either: <ul style="list-style-type: none">(a) existing Ordinary Members, Life Members, Junior Members, Honorary Members, Temporary Members, Provisional Members, Interstate Members or Overseas Members (as those membership categories are defined in the Constitution); and(b) members of the public,

to:

- (i) participate in CRC sports;
- (ii) use the CRC Facilities; or
- (iii) otherwise access CRC Facilities or attend CRC events,

without being required to become members of CRC, or pay membership fees specific to a particular CRC section.

- Commencement Date** means the date of commencement of the First Lease.
- Constitution** means the Constitution of CRC.
- CRC Facilities** means existing and future facilities of CRC to which CRC members have access to from time to time.
- Deed** means this deed and all Schedules and Annexures hereto, as amended from time to time.
- First Lease** has the meaning given in the Agreement for Lease.
- Grace Period** means the period of 3 years from the Commencement Date.
- Insolvency Event** the occurrence of any one or more of the following events in relation to any person:
- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
 - (b) a liquidator or provisional liquidator is appointed;
 - (c) an administrator is appointed to any of its assets;
 - (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
 - (e) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
 - (f) it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;
 - (g) it becomes insolvent, under administration or action is taken which could result in that event;
 - (h) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act (2001) (Cth);
 - (i) a notice is issued under sections 601AA or 601AB of the Corporations Act;

- (j) a writ of execution is levied against it or a material part of its property;
- (k) it ceases to carry on business or threatens to do so, other than for reorganisation or restructuring in accordance with the terms of this deed; or
- (l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

Land	means 60-74 The Crescent, Cheltenham NSW 2119 known as the Cheltenham Recreation Club.
Leases	means the First Lease, the Second Lease, the Third Lease, the Fourth Lease, the Fifth Lease and the Sixth Lease as defined in the Agreement to Lease (subject to the terms of the Agreement to Lease).
Local Government	means the Hornsby Shire Council.
Month	means a calendar month.
Management Services	means the day to day management of the Real Tennis Facility described in Schedule 1 and Schedule 2 attached to this Deed and any additional or varied services agreed between the Parties from time to time and subject to the terms of this Deed but Management Services does not include the performance of any services or actions which are unlawful.
Periodic Contributions	means any contribution required by CRC to be paid by each CRC section to CRC on a semi-regular basis to fund capital expenditure, general CRC repairs and other general costs.
Real Tennis Facility	means the real tennis facility located on the Land.
Real Tennis Professional	means a professional real tennis player engaged on an employment or contractor basis for the benefit of the SRT Section.
Section Contributions	means the amount per full playing member that each CRC section must pay to CRC. This amount is currently set at \$250, but may be varied from time to time by the board of the CRC.
Sixth Lease	has the meaning given in the Agreement for Lease.
SRT Membership Fee	means any annual fee payable by members of the SRT Section to the SRT Section in order to satisfy the conditions attaching to membership of any class of membership of the SRT Section.
SRT Section	means the section of the CRC comprised of various categories of real tennis member, as defined in the Constitution.
SRT Section Members	means any class of CRC member set out in the Constitution, who joins CRC as a member of the SRT Section, including Full Real Tennis Members.
Full Real Tennis Member	means Full Real Tennis Members, as defined in the Constitution.

Term	means the period commencing on the Commencement Date until the Terminating Date or earlier termination of this Deed.
Terminating Date	means the later of: <ul style="list-style-type: none"> (a) the terminating date of the Sixth Lease; and (b) the day SRTC ceases to hold over under the provisions of the Sixth Lease.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) Words importing the singular number include the plural and vice versa. Any gender includes the other genders. Any reference to a person, includes a reference to a corporation, firm, authority, or Government Agency.
- (b) A reference to legislation, or to a legislative provision, includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision, and any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
- (c) The clause headings in this Deed are for reference purposes only and do not in any way influence or affect the meaning of this Deed.
- (d) A reference to any covenant, agreement, licence, document or other instrument (including this Deed), includes a reference to that covenant, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
- (e) A reference to a party to this Deed, or to any other covenant, agreement, licence, document or other instrument required under this Deed, or for the purposes of this Deed, includes that party's successors and permitted assigns (save in respect of the Tenant, references to which expressly exclude any assignees of the Tenant).
- (f) Where under or pursuant to this Deed, or anything done under this Deed, the day on or by which any act, matter or thing is to be done is not a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (g) Where under or pursuant to this Deed, or anything done under this Deed, the day on or by which any act, matter or thing is to be done is the 29th, 30th or 31st day of any Month in which such a day does not occur, such act, matter or thing must be done on the last day of that Month.
- (h) References to Parts, clauses and Schedules, are references to Parts and clause of, and Schedules to, this Deed.
- (i) A reference to bankruptcy or liquidation includes winding up, liquidation, provisional liquidation, dissolution, becoming insolvent, the appointment of a receiver or receiver and manager, under administration or external control and circumstances and events giving rise to, or contributing to, any such condition or matters.
- (j) The expression \$ or **dollars** means the lawful currency for the time being of the Commonwealth of Australia.

2. Condition Precedent and Term

2.1 Condition Precedent

This Deed is subject to and conditional upon the Leases being entered into and in the event that the Agreement to Lease is terminated or rescinded, then either Party may terminate this Deed by giving the other Party a notice in writing and on termination of this Deed, the Parties are released from their obligations under this Deed except in respect of breaches of this Deed which remain unsatisfied at the date of termination.

3. Management Services and Access Arrangements

3.1 CRC to provide Management Services

In consideration of SRTC's grant of a right of access to the Real Tennis Facility to CRC (and conferring on CRC the power to grant rights of access and rights of use of the Real Tennis Facility to persons determined by CRC) under this Deed, subject to clause 5.1(a), CRC must provide the Management Services during the Term.

3.2 Exclusivity

CRC must not appoint any other person to provide the Management Services or similar services or provide competing services in respect of the Real Tennis Facility during the Term.

3.3 Access to the Real Tennis Facility

Subject to the terms of this Deed, on and from the Commencement Date, SRTC grants to CRC access to the Real Tennis Facility for the purpose of:

- (a) CRC providing the Management Services in accordance with the terms of this Deed; and
- (b) enabling CRC to grant rights of access and rights of use of the Real Tennis Facility to persons determined by CRC in accordance with the terms of this Deed including any persons which CRC engages pursuant to clause 3.2.

4. Establishment of the SRT Section and Memberships

4.1 Establishment of the SRT Section

CRC must cause or allow the SRT Section to be established as a new sports section of CRC before the Commencement Date for the purpose of the SRT Section carrying out its responsibilities in this Deed and, in establishing the SRT Section, do so on such terms as to ensure the obligation of the SRT Section set out in this Deed will be obligation of the SRT Section to be discharged as and from the establishment of the SRT Section.

4.2 SRT Section Members to have access to CRC Facilities

CRC must allow SRT Section Members access to the CRC Facilities on the same terms as the members of the other sections of CRC (other than the SRT Section).

4.3 Establishment of the SRT Section bank account

CRC must cause or allow the SRT Section to open bank accounts to allow the SRT Section to collect and hold money, and to pay the costs and expenses referred to in clause 5.2 below.

4.4 Real Tennis Players must become members of SRT Section of CRC

Subject to any Casual Play Exemptions, the Parties agree that all people wishing to play real tennis at the Real Tennis Facility, including current SRTC members, must become SRT Section Members of CRC, as appropriate, by paying the appropriate SRT Membership Fee.

4.5 SRT Section to pay Section Contributions

The SRT Section must pay Section Contributions to CRC each time any Full Real Tennis Member joins the SRT Section.

4.6 Entrance Fee during Grace Period waived

CRC agree that SRT Section Members who become members during the Grace Period will not be required to pay any Entrance Fee.

5. SRT Section Responsibilities of Management Services and Costs Allocation

5.1 Management Services – Schedule 1

- (a) CRC must cause or allow the SRT Section to carry out the Management Services in **Schedule 1** of this Deed.
- (b) Subject to the SRT Section's obligations to pay any monies to CRC including SRT Contributions and Periodic Contributions, all revenue derived by the SRT Section in carrying out the Management Services in **Schedule 1** will be retained by the SRT Section for the purpose of the operations of the SRT Section.

5.2 Costs Allocation of Management Services – Schedule 1

All costs and expenses of the Management Services in **Schedule 1** of this Deed must be allocated as an expense payable by the SRT Section and must be paid by the SRT Section.

5.3 Costs Allocation of Management Services - Schedule 2

All expenses arising out of the Management Services in **Schedule 2** of this Deed are payable by CRC.

5.4 Compliance with Law and Regulations

CRC must ensure that the SRT Section complies with all laws in the performance by the SRT Section of its obligations under this Deed.

6. Employment of Real Tennis Professionals

6.1 Employment of Real Tennis Professionals by the SRT Section

The following terms govern the engagement of any Real Tennis Professional:

- (a) the SRT Section will be responsible for selecting, employing, monitoring the performance of, and generally managing any Real Tennis Professional;
- (b) the SRT Section will be responsible for paying any Real Tennis Professional, and must set the base salary of any Real Tennis Professional having regard to the turnover generated from the court bookings of the real tennis courts and membership levels of the SRT Section;
- (c) before employing any Real Tennis Professional, the SRT Section must obtain approval of the proposed terms of employment of any Real Tennis Professional from the board of the CRC (such approval not to be unreasonably withheld or delayed), and at least 1

board member must be a signatory to the terms of employment of any Real Tennis Professional.

6.2 Security deposit to cover risk of employment of Real Tennis Professional

If any Real Tennis Professional is engaged on a basis other than a fully freelance or contractor basis, a security deposit must be provided by the SRT Section to the CRC, on the terms set out below:

- (a) during the period commencing on the Commencement Date and ending 5 years later, SRTC must provide a security deposit to CRC in accordance with clause 6.3 and clause 6.4 below.
- (b) during the period commencing 5 years from the Commencement Date and continuing until the end of the Term of this deed, the SRT Section must provide a security deposit to CRC in accordance with clause 6.3 and clause 6.4 below.

6.3 Calculation of security deposit amount

- (a) The amount of the security deposit must be agreed between CRC and SRTC, or CRC and the SRT Section (both acting reasonably and in accordance with this clause 6.3).
- (b) In agreeing to the amount of the security deposit, the parties will take into account all factors which influence the level of risk associated with the employment of any Real Tennis Professional, including but not limited to:
 - (i) the amount of the base salary payable annually to the Real Tennis Professional at the time of calculation of the security deposit amount;
 - (ii) the amount of any variable component of the salary paid to the Real Tennis Professional;
 - (iii) the minimum notice period included in the Real Tennis Professionals' terms of employment;
 - (iv) any other severance benefits included in the Real Tennis Professional's terms of employment; and
 - (v) any other benefits or entitlements payable annually and which are included in the Real Tennis Professional's terms of employment.

6.4 Absence of Agreement

In the event the amount of the Security Deposit is not agreed pursuant to clause 6.3, the amount of the Security Deposit shall be not less than the amount equal to the amount which will become payable to any employed Real Tennis Professional who is employed by the SRT Section being, in aggregate, the amounts set out in subclauses (i), (ii) and (v) of clause 6.3(b) payable over a period of six (6) months.

7. CRC Internal Procedures & CRC's Constitution

7.1 CRC to adopt internal policies

CRC must implement or adopt all internal policies and protocols required to give effect to the terms of this Deed.

7.2 CRC's Constitution

If the Constitution is required to be amended to give effect to any terms of this Deed, CRC must use its best endeavours to ensure that the Constitution is amended appropriately.

8. Grace Period and SRT Section Periodic Contributions

8.1 Grace Period

The SRT Section is not required to pay any Periodic Contributions to CRC during the Grace Period.

8.2 Current Periodic Contributions

Currently, Periodic Contributions are charged by CRC at 50% of each section's income. The Parties recognise that this percentage will not be appropriate in respect of SRT Section income, as SRT Section income is expected to be higher, due to the SRT Section's fees being higher than other CRC section fees, to take into account the relatively higher costs of running and maintaining the SRT Section as compared to other CRC sections.

8.3 Calculation of Periodic Contributions

During the final six (6) months of the Grace Period, CRC agrees to consult with SRT Section Members for the purpose of CRC determining an appropriate method of the calculation of Periodic Contributions payable by the SRT Section as and from the end of the Grace Period.

8.4 Periodic Contributions to take into account beneficial value to CRC

In the event that the Real Tennis Facility incorporates facilities that are beneficial to, and accessible to CRC members other than SRT Section Members, CRC will take the value of these facilities into account when deciding upon the appropriate method of calculating Periodic Contributions for the purpose of clause 8.3.

8.5 Payment of Periodic Contributions

The SRT Section must pay Periodic Contributions as and from the end of the Grace Period.

8.6 CRC to Determine the Periodic Contributions of the SRT Section

CRC may determine the Periodic Contributions payable by the SRT Section as and from the end of the Grace Period and must act reasonably in doing so.

9. Default

9.1 Events of Default

If a party (**Defaulting Participant**):

- (a) commits a material breach of this Deed and the other party (**Non-Defaulting Participant**) gives written notice of the breach and requests rectification within 14 days, and the Defaulting Participant does not rectify the breach in that time period; or
- (b) suffers an Insolvency Event; or
- (c) being CRC:
 - (i) assigns or attempts to assign, transfer or otherwise disposes of its interest in the Land in a manner such as to derogate from, or abrogate, the benefits enjoyed, or to be enjoyed, by the SRT Section under this Deed;
 - (ii) assigns or attempts to assign, transfer or otherwise disposes of its rights or obligations in this Deed;
 - (iii) ceases to operate a sports club on the Land; or

- (iv) without reasonable cause wholly suspends the carrying out of the Management Services; or
- (b) being SRTC assigns or attempts to assign, transfer or otherwise disposes of its rights or obligations in this Deed,

then an Event of Default has or is deemed to have occurred in relation to that party and that party is deemed to be a Defaulting Participant.

9.2 Consequences of Events of Default

Upon the occurrence of an Event of Default the Non-Defaulting Participant may by notice in writing to the Defaulting Participant terminate this Deed.

9.3 Consequences of Termination

If this Deed is terminated by SRTC in accordance with clause 9.2, upon the basis of a breach described in any of the clauses 9.1(c)(i), 9.1(c)(ii), 9.1(c)(iii) and 9.1(c)(iv) all rights, obligations, and responsibilities in respect of the Management Services will revert to SRTC and:

- (a) CRC's rights of access to the Real Tennis Facility will cease;
- (b) CRC must give SRTC all keys to the Real Tennis Facility and all books and records, including electronic records associated with the Management Services of the Real Tennis Facility, membership details, and all other information necessary for the continued operation of the Real Tennis Facility; and
- (c) SRTC will retain the absolute discretion to manage the day to day running of the commercial and sporting activities of the Real Tennis Facility.

10. End of Lease Arrangements

At the end of the term of the Sixth Lease, CRC agrees to implement an internal policy that has the effect of requiring a minimum 75% majority vote of the CRC members at that time to approve of the directors of CRC changing the use of the Real Tennis Facility to anything other than it being used for the playing of real tennis and activities associated with real tennis.

11. Disputes

11.1 Dispute Resolution

CRC and SRTC must not commence any legal proceedings in respect of any disputes or differences arising out of this Deed, unless CRC and SRTC have attempted to resolve the dispute in accordance with this clause 11.

11.2 Notice of Dispute

Either party may, at any time, notify the other party in writing at the address set out in this Deed that there is a dispute or difference concerning any matter in this Deed. That notice must:

- (a) identify the subject matter of the dispute;
- (b) identify the relevant provisions of this Deed to which the dispute relates;
- (c) annex copies of any documents, correspondence, background material and information, relevant to that dispute; and
- (d) contain details of the issues in the dispute.

11.3 Meeting

The parties must, within 10 Business Days after service of a notice under clause 11.2, meet in an attempt to discuss, and to reach a mutually acceptable decision, on the matter in dispute.

11.4 Referral to Mediation

If:

- (a) the matter in dispute is not settled within 10 Business Days after the meeting referred to in the preceding sub-clause, or such later date as the parties may agree; or
- (b) either party refuses to attend a meeting in accordance with clause 11.3,

CRC or SRTC may commence proceedings in any court having jurisdiction to hear the dispute.

12. Warranties

12.1 Warranties

Each party warrants to the other party that:

- (a) it has the power to enter into and perform this Deed;
- (b) by entering into and performing this Deed:
 - (i) it does not breach any obligation, including any statutory, contractual or fiduciary obligation; and
 - (ii) it is not in default under an agreement which binds it;
- (c) no action has been taken towards the winding-up of it;
- (d) it has not proposed or reached a voluntary arrangement with a creditor;
- (e) it is able to pay its debts as and when they fall due; and
- (f) this Deed is a valid, binding and enforceable obligation of it.

12.2 Indemnity for breach of warranty

Each party indemnifies and holds each other party harmless from any damage, loss or expense, directly or indirectly as a result of or arising out of the failure of a warranty made by that party in clause 12.1 to be true and correct on the date of this Deed.

12.3 Enforcement of indemnities

- (a) Damage, loss or expense includes but is not limited to interest, penalties and expenses.
- (b) Expenses include but are not limited to reasonable legal fees, suffered or incurred by it or them.

13. Notices

13.1 General

Any notice, demand, certification or other communication under this Deed must be given in writing and may be given by an authorised representative of the sender.

13.2 Address for service

A notice, request, demand, consent, approval or other communication to or by a party or between the parties to this Deed and the Leases must be:

- (i) in writing; and
- (ii) sent by registered post or left at the address or sent to the email address or facsimile number of the party set out in the Parties section of this Deed, as varied by notice.

13.3 Method of service

A notice or approval is taken to be given if sent by:

- (i) post, is deemed to have been served on the fourth Business Day after the day it was posted by express post;
- (ii) facsimile, is deemed to have been served at the time that the notice was transmitted unless the sender's facsimile machine indicates a malfunction in the transmission; or
- (iii) email, immediately when sent, unless the sender receives an out of office reply or the email is undeliverable.

14. General

14.1 Governing law and jurisdiction

- (a) This Deed is governed by the laws of the State of New South Wales.
- (b) The parties submit to the exclusive jurisdiction of the New South Wales courts.

14.2 Amendment

This Deed may not be amended or varied unless the amendment or variation is in writing signed by all parties.

14.3 Attorneys

Each person who executes this Deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Deed under that power.

14.4 Entire agreement

This Deed together with the Agreement for Lease and the Leases, constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this Deed and have no further effect.

14.5 Assignment

A party must not transfer, assign or part with its rights or obligations or the benefit of those rights under this Deed without the other party's prior written consent in writing, which consent may not be unreasonably withheld provided the party assigning or transferring such rights procures from the assignee or transferee a deed on the same terms as this Deed.

14.6 Exercise of a right

- (a) A party may exercise a right:
 - (i) at its discretion; and

- (ii) separately or together with another right.
- (b) If a party exercises a single right or only partially exercises a right, then that party may still exercise that right or any other right later.
- (c) If a party fails to exercise a right or delays in exercising a right, then that party may still exercise that right later.

14.7 Counterparts

This Deed may be executed in any number of counterparts and all counterparts taken together will constitute one document.

14.8 Severability

Part or all of any provision of this Deed that is illegal or unenforceable will be severed from this Deed and will not affect the continued operation of the remaining provisions of this Deed.

14.9 Survival of indemnities

Each indemnity in this Deed:

- (a) is a continuing obligation, separate from the other obligations of a party; and
- (b) survives termination of this Deed.

14.10 Waiver

A provision of this Deed or a right created under it may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.

14.11 Order of Precedence

In the event of any ambiguity, discrepancy or inconsistency with respect to the documents referred to below then the order of precedence of those documents is as set out below:

- (a) the Agreement for Lease;
- (b) the Leases; and
- (c) this Management Deed,

such that the provisions of the documents described in the earlier subclauses shall take precedence over those described in later subclauses. For example, the document described in subclause (a) shall take precedence over the documents described in subclauses (b) and (c), and the documents described in subclause (b) shall be subject to the document described in (a) but shall take precedence over the document described in (c).

EXECUTED as an agreement

EXECUTED by The Cheltenham
Recreation Club Ltd ACN 000 005 890
in accordance with section 127 of the
Corporations Act 2001


Signature of Director

LESLEY TREGONING
Name of Director


Signature of Director

BAIN SHENSTONE
Name of Director

EXECUTED by Sydney Real Tennis
Club Inc NSW Association Number: INC
9895108 in accordance with section 22(1)
of the Associations Incorporations Act
2009 (NSW)


Signature of Authorised Signatory

MICHAEL FITZGERALD
Name of Authorised Signatory



Signature of Authorised Signatory

CHRISTOPHER COOPER
Name of Authorised Signatory

Schedule 1 – Management Services Schedule

1. Arrange, manage, maintain and record court bookings of the Real Tennis Facility.
2. Collect, record and manage SRT Membership Fees, court fees, and any other fees specific to the use of the Real Tennis Facility.
3. Arrange, plan and organise events held on or relating to the Real Tennis Facility.
4. Arrange for the security of the Real Tennis Facility.
5. Maintain and repair the internal sections of the Real Tennis Facility (such as fixtures and fittings, playing surface and equipment).
6. Arrange and maintain the SRT Section-specific phone lines and websites.
7. Arrange and maintain any insurance specific to the SRT Section as required.
8. Arrange and maintain insurance cover for the contents of the Real Tennis Facility.
9. Arrange and collect any other specific membership, subscription or other fees or expenses related to the sport of real tennis being carried out on the Premises.
10. Arrange and maintain any international or national real tennis association memberships.
11. Arrange any SRT Section-specific marketing or promotion.
12. Arrange any SRT Section-specific fundraising.
13. Arrange, manage, and collect revenue from the sale of merchandise specific to the SRT Section.



Schedule 2 – Management Services Schedule

1. Subject to obtaining any necessary approvals from any Authority which are required to lawfully perform the Specified Activities, undertake the Specified Activities. In this paragraph 1:

The "**Specified Activities**" means:

- (a) the maintenance, stocking, funding, and running of any bar facilities located within the Real Tennis Facility, including the appointment, remuneration and management of any staff required for such bar facilities, if any; and
 - (b) ensuring the responsible service of alcohol within the Real Tennis Facility;
2. The ongoing maintenance and repair of the external sections of the Real Tennis Facility and surrounding areas, including but not limited to, the exterior walls, windows and roof of the Real Tennis Facility, flower beds, lawns, external walkways, and parking facilities;
 3. The following general running costs of the Real Tennis Facility:
 - (a) Electricity;
 - (b) Water;
 - (c) Gas;
 - (d) Waste removal;
 - (e) Cleaning;
 - (f) Landscaping; and
 - (g) Council rates,
 4. The purchase and maintenance of public liability insurance covering the Real Tennis Facility; and
 5. The purchase and maintenance of building insurance covering the Real Tennis Facility.

Notes to Schedule 2

- I. Subject to Note II, the parties agree CRC shall have no obligation to provide the Management Services described in paragraph 1 if it is unable to obtain the necessary approvals from any Authority which are required to lawfully perform the Specified Activities.
- II. CRC agrees to use its reasonable endeavours to obtain the necessary approvals from any Authority which are required to lawfully perform the Specified Activities.