

Dated _____ 2017

DOVER DISTRICT COUNCIL (1)

And

YOUR LEISURE KENT LIMITED (2)

FUNDING AGREEMENT

relating to

LEISURE SERVICES

Harvey Rudd
Solicitor to the Council
Dover District Council
White Cliffs Business Park
Dover
Kent CT16 3PJ

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THIS AGREEMENT is made the _____ day of _____ 2017

B E T W E E N:

1. **DOVER DISTRICT COUNCIL** of White Cliffs Business Park Dover Kent CT16 3PJ ('the Council')
2. **YOUR LEISURE KENT LIMITED** whose registered office is at Winter Gardens Fort Crescent Margate Kent CT9 1HX (Company Registration no IP28889R) ('the Company')

INTRODUCTION

1. The Council is a District Council which is intending to exercise its powers under Section 19(3) of the Local Government (Miscellaneous Provisions) Act 1976
2. Your Leisure Kent Limited is an industrial and provident society with charitable objectives registered under the Industrial and Provident Societies Act 1965 and is also a voluntary organisation which has amongst its objects the provision of community recreational facilities as defined in Section 19 of the Local Government (Miscellaneous Provisions) Act 1976
3. The parties agree that this Agreement shall deal with the arrangements for certain Services which are to be carried out by the Company

THE PARTIES AGREE as follows:-

1. Interpretation

- 1.1 'Approved Business Plan' means the business plan prepared by the Company and agreed by the Council from time to time
- 1.2 'Commencement Date' means 1 April 2017
- 1.3 'Funding' shall mean the sums payable by the Council to the Company under this Agreement
- 1.4 'Funding Payments' shall mean any payment made by the Council to the Company under the terms of this Agreement
- 1.5 'Funding Period' means the period commencing on the Commencement Date and ending on 31 March 2018
- 1.6 'Leases and Licences' shall mean the leases and licences under which the premises at which the Services are to be performed pursuant to this Agreement are or may be demised to the Company by the Council and 'Lease and Licence' has a corresponding meaning
- 1.7 'The Premises' shall mean those premises known as Dover Leisure Centre, Dover and Tides Leisure Pool and Indoor Tennis Centre, Deal which are the subject of the Leases and Licences

- 1.8 'The Services' shall mean all those services for which the Council is making Funding Payments as set out in this Agreement

2 Funding Period and Amount of Funding

- 2.1 The amount of Funding for the Funding Period is £265,000.00 (two hundred and sixty-five thousand pounds)

3. Payment Arrangements

- 3.1 The Council will pay the Funding to a bank account in the name of the Company and the Company shall use the Funding solely for the purposes set out in accordance with the provisions of clause 5 hereof
- 3.2 Payments will only be made subject to the Council being satisfied that the Company has properly used (or are intending properly to use) the said funds in accordance with the terms of this Agreement
- 3.3 It is agreed that wilful breach of this Agreement by the Company would entitle the Council to terminate this Agreement and that the Council may require repayment of all moneys already paid to the Company which had not been spent at the date of such termination
- 3.4 At any time when a payment falls to be made by one party to the other the parties may agree to set off any sum or sums due to the paying party from the other

4. Financial Management and Monitoring

- 4.1 The Company shall operate all customary financial management systems in accordance with established best standards of accounting practice. In particular their accounts will be prepared in accordance with all relevant guidance issued by the Financial Reporting Council and will follow the requirements of Accounting and Reporting by Charities: Statement of Recommended Practice 2005, identifying as appropriate any exceptions to the Statement.
- 4.2 The Company shall maintain such financial operational and service records as shall be necessary to establish that the terms of this Agreement are being fulfilled, and, in particular that the Funding is being used to assist the Company in providing the Services at the Premises and for no other purpose. The Company shall at the request of the Council forthwith make such records available to the Council or its representatives (including its internal or external auditor).
- 4.3 Without prejudice to the generality of the foregoing the Company shall provide such information to the Council and at such intervals as shall be agreed from time to time as part of the regular programme for monitoring the Company's performance

- 4.4 The Company shall submit unaudited accounts to the Council as soon as they are available and in any case not later than 3 months after the end of the Company's financial year
- 4.5 The Company shall submit audited accounts to the Council as soon as they are available and in any case not later than 6 months after the end of the Company's financial year

5. The Purpose of the Funding

- 5.1 The Council has provided the Company with a copy of its recent adopted Indoor Sports Facility Strategy July 2016 and the Playing Pitch and Outdoor Sports Facility Strategy February 2015 which set out the Council's strategic sport, leisure and health objectives. Schedule 2 sets out the specific sport, leisure and health contributory key drivers and objectives, all of which the Company has hereby agreed to assist in delivering by providing the Services at the premises subject to Leases and Licences within the District of Dover (including such ancillary services which are specified in the Schedule 2).
- 5.2 The Company will provide the Council with performance information relating to performance indicators agreed between the parties.
- 5.3 The Company has prepared the Approved Business Plan showing how it will provide the recreational and other services referred to in clause 5.1
- 5.4 The purpose of the Funding is to assist the Company in the provision of those Services as are more particularly specified in the Approved Business Plan at the Premises (and only for such purposes) by way of enabling the Council to fulfil its statutory functions under Section 19(3) of the Local Government (Miscellaneous Provisions) Act 1976 and Section 145 Local Government Act 1972 by the provision of high quality sport and leisure services as evidenced by robust performance measures.

6. Reviews and Variations

- 6.1 The parties agree that they will have regular and general reviews of this Agreement and without prejudice to the generality of this clause any such review will consider whether the Council's strategic objectives and performance indicators (as set out in this Agreement) are being met the level of expenses being incurred by the income being achieved and consequentially whether or not the current past and any proposed level of funding is at the right level whether best value is being delivered as set out in clause 7 and without prejudice to the generality of this provision will have reviews not less than quarterly
- 6.2 The parties further agree that if either party considers that there is an urgent need to discuss the operation of this Agreement that they will meet expeditiously to discuss the implications of any such changes and to use reasonable endeavours to agree all necessary variations to the purposes for which the Funding may be used including any required

amendments to the Approved Business Plan

- 6.3 The Company will provide all required information (without making any charge) and fully co-operate with the Council so that the Council can carry out the reviews efficiently and expeditiously
- 6.4 Without prejudice to the generality of clauses 6.1 and 6.2 if either party is in breach of any of its obligations in this Agreement any of the Leases Licences Transfer Agreement or any other arrangements between the parties they will meet expeditiously to discuss the implications of such breaches

7. Best Value

- 7.1 The Council is obliged to carry out its duties in accordance with the statutory duty of 'Best Value'
- 7.2 In order to enable the parties to demonstrate the best value principles as set out above the parties will seek to agree a mutually acceptable method of evaluating whether Best Value is being delivered including consideration of appropriate benchmarking exercises

8. Alterations to Memorandum or Articles

- 8.1 The Company agrees that it will not alter or amend its Memorandum or Articles of Association without prior consultation with the Council

9. Status of The Company and Part V Local Government and Housing Act 1989 and Companies Orders

THE COMPANY warrants that:

- 9.1 it is a voluntary organisation as defined in Section 19(3) of the Local Government (Miscellaneous Provisions) Act 1976 and will remain a voluntary organisation throughout the Funding Period
- 9.2 it is not a controlled, regulated or influenced company as defined in Part V of the Local Government and Housing Act 1989 (or the Local Authorities (Companies) Orders 1995 and 1996) and will not so become during the Funding Period
- 9.3 that less than twenty percent of its members is a local authority associated person within the definition of such person in Section 69(5) of the Local Government and Housing Act 1989 and that it will use its best endeavours to prevent any member so becoming
- 9.4 none of the members of its Board of Trustees is a local authority associated person within the definition of such person in Section 69(5) of the Act and that it will use its best endeavours to prevent any member of its Board of Trustees so becoming

10. Disputes

- 10.1 If any dispute arises out of this Agreement (save as set out below) the parties shall have the option to settle it by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure ("the Model Procedure") and the following provisions of this sub-clause:
- 10.2 Either party shall give a notice ("the ADR Notice") to the other requesting a mediation in accordance with this sub-clause and a copy of the ADR Notice shall be sent to CEDR
- 10.3 The Model Procedure shall be amended to take account of any relevant provisions in this Agreement or any other additional agreement which the parties may enter into in relation to the conduct of the mediation
- 10.4 If there is any question on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within 14 days from the date of the ADR Notice CEDR will at the request of either party (and after consultation with the parties) decide such question
- 10.5 The mediation shall start not later than 28 days after the date of the ADR Notice

11. Value Added Tax

- 11.1 Any payments made in accordance with this Agreement are exclusive of Value Added Tax ('VAT') and VAT shall be added to any payments where appropriate
- 11.2 In respect of the Funding Payments on receipt of any valid VAT invoice from the Company the Council shall pay VAT to the Company in addition to the other sums payable in accordance with this Agreement

12. This Agreement not to constitute a partnership

- 12.1 None of the provisions of this Agreement shall be deemed to constitute a partnership between the parties and neither of them shall have any authority to bind the other in any way

13. Termination

- 13.1 This Agreement shall terminate automatically upon the expiration of the Funding Period
- 13.2 On termination of this Agreement, however it ends, the Leases and Licences will automatically determine.
- 13.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

IN WITNESS whereof this Agreement has been entered into and delivered as a deed on the date stated at the beginning

SCHEDULE 1

THE PURPOSES OF THE FUNDING

1. The purpose of the funding is primarily to enable the Company help achieve the Council's strategic sport, leisure and health objectives as set out in its adopted Indoor Sports Facility Strategy July 2016 and the Playing Pitch and Outdoor Sports Facility Strategy February 2015 at the Premises together with such other specific objectives as may be agreed between the Company and the Council from time to time.
2. The purpose of the funding is also to ensure that the Company is providing a range of safe, affordable and accessible sport and leisure activities to the residents of Dover District at the Premises by achieving a range of broader social and economic benefits for the communities in which the Premises are located. When considering whether to offer any further funding to the Company the Council will consider whether the Company is prepared to (and has) made the Premises available to the public.
3. Key performance indicators linked to district sport, leisure and health drivers and objectives will help to monitor and measure the Company achievements in strategic delivery.

SCHEDULE 2

SPECIFIC CONTRIBUTION TO SPORT, LEISURE AND HEALTH KEY DRIVERS AND OBJECTIVES

The relevant sport, leisure & health key drivers and objectives are as follows (the numbering reflects the numbering in the adopted strategies identified below):

Contribution to key drivers set out in the **Dover District Playing Pitch and Outdoor Sports Facility Strategy February 2015**

- The need to encourage healthy lifestyles (1.5 – 1.8)
- To help maintain and increase participation levels in sport (1.9 – 1.11)
- The need to ensure that existing stock is used efficiently and effectively (1.17 – 1.18)
- Promoting community cohesion (1.19 – 1.22)

Strategic priorities set out in the action plan of the adopted **Dover District Indoor Sports Facility Strategy July 2016**

- (2) Maximising revenue generation from existing facilities
- (4) Progress with proposals for improvement of facilities at Tides Leisure Centre
- (6) Ensure the sports facility charges are reasonable in terms of affordability to residents and are comparable with similar facilities elsewhere

- (12) Contribute towards addressing specific issues relating the district's demographic profile ie high rates of obesity levels, ensure appropriate provision

for the ageing population and contribute to improving below average levels of sports participation

- (13) Use indoor sport and leisure facilities to improve levels of physical activity in the whole population and reduce the gap in health inequalities by promoting access and engagement with at risk groups
- (16) Work with local swimming clubs to ensure they have sufficient time and space to aid development of their club.
- (23) Support re-development of health and fitness at Tides Leisure Centre and Indoor Tennis Centre
- (27) Ensure effective programming and appropriate pricing in order to continue extensive club, community and elite player usage at Tides Indoor Tennis Centre
- (29) Support re-development of workout and spinning provision at Dover & Tides Leisure Centres

THE COMMON SEAL OF DOVER

DISTRICT COUNCIL was affixed to this deed

in the presence of:

Authorised Officer

**Signed as Deed by
YOUR LEISURE KENT LIMITED**

By A Secretary and Director/Two directors

Director

Director/Secretary