

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2014

704.558.1-HK

**BELFAST CITY COUNCIL**

**TO**

**TRUSTEES OF SPRINGFIELD STAR – BLACKMOUNTAIN**

**LEASE**

**Land Adjacent to Springmartin Play Area**

John Walsh  
Town Solicitor  
City Hall  
Belfast  
BT1 5GS

Engrossed 17.9.2014

**THIS INDENTURE** made the

day of

2014

**BETWEEN**

**BELFAST CITY COUNCIL** of City Hall, Belfast, BT1 5GS (hereinafter called 'the Council') of the one part and **JIM WAITE** of 10 Highfield Drive, Belfast, BT13 3RL, **DONNA MOOREHEAD** of 65 Springmartin Road, Belfast, BT13 3PJ, and **FRANK McCOUBREY** of 67 Springmartin Road, Belfast, BT13 3PJ, the Trustees of **SPRINGFIELD STAR – BLACKMOUNTAIN** (hereinafter called 'the Lessee') of the other part.

**WHEREAS**

As part of the Local Investment Fund the Council has installed a new mini soccer pitch with a 3<sup>rd</sup> generation playing surface, 4m high pitch side fencing and 4 floodlight masts at lands adjacent to Springmartin Play Area.

**NOW THIS INDENTURE WITNESSETH** as follows:-

**DEFINITIONS**

- 1.1 The terms defined in this clause shall for all purposes of this Lease have the meaning specified in this clause.
- 1.2 'the Council's covenants' mean the covenants set out in the Second Schedule hereto.
- 1.3 'the Exceptions' mean the exceptions and reservations set out in the Third Schedule hereto.
- 1.4 'the Lessee's covenants' mean the covenants set out in the First Schedule hereto.
- 1.5 'the Map' means the Map annexed hereto.
- 1.6 'the Pipes' mean and include pipes, sewers, drains, conduits, gutters, watercourses, wires, cables, channels and all other conducting media.
- 1.7 'the Premises' mean **ALL THAT** piece or parcel of land comprising a mini soccer pitch containing approximately 0.613 acres statute measure together with all erections constructed thereon now or in the future and including the entirety of any perimeter walls or fencing forming the boundary with the Council's retained lands situate at lands adjacent to Springmartin play area, Belfast more particularly described and delineated on the Map and thereon edged red.
- 1.8 'the Rent' means the initial yearly rent of £200.00 for the period of 3 years from the Rent Commencement Date payable from and including the Rent Commencement Date quarterly in advance subject to review every 5 years in accordance with the Fourth Schedule hereto.

1.9 'the Rent Commencement Date' means the Possession Date.

1.10 'the Rights' means the rights set out in the Fifth Schedule

1.11 'the Possession Date' means 7<sup>th</sup> September 2013 or such later date as communicated to the Lessee in writing by the Council

1.12 'the Term' means the term of 3 years from the Possession Date and shall include the period of any holding-over or any extension or continuance thereof whether by statute, by this Lease or by common law where the context so admits.

### **INTERPRETATION**

2.1 The expression 'the Council' shall where the context so admits include its successors in title.

2.2 The expression 'the Lessee' does not include any successors in title of the Lessee but shall include any assignees of the Lessee as approved by the Council.

2.3 Any reference to a statutory enactment or order shall include any statutory extension modification or re-enactment thereof or any regulations or orders made thereunder.

2.4 Any covenant by the Council or the Lessee not to do an act or thing shall be deemed to include an obligation not to permit such act or thing to be done.

2.5 The paragraph headings do not form part of this Lease and shall not be taken into account in the construction or interpretation thereof.

### **THE DEMISE**

3. In consideration of the Rent herein reserved and of the Lessee's covenants hereinafter contained the Council **HEREBY DEMISES** unto the Lessee the Premises **TOGETHER** with the Rights **EXCEPTING AND RESERVING** unto the Council the Exceptions **TO HOLD** the same unto the Lessee for the Term **YIELDING AND PAYING** therefor unto the Council the Rent (or such reviewed rent) payable quarterly in advance on 31<sup>st</sup> January, 31<sup>st</sup> April, 31<sup>st</sup> July and 31<sup>st</sup> October in each year throughout the Term from the Rent Commencement Date. The initial quarter payment shall be paid on the Possession Date.

### **THE COVENANTS**

4.1 The Lessee hereby covenants with the Council to observe and perform the Lessee's covenants at all times during the Term.

4.2 The Council hereby covenants with the Lessee to observe and perform the Council's covenants at all times during the Term.

### **PROVISOS**

5.1 If and whenever during the Term there shall be any material breach or non-performance or non-observance of any of the Lessee's covenants and terms herein or of the covenants on its part in circumstances where the Council has served notice upon the Lessee specifying the alleged breach or non-performance and the Lessee has failed to remedy the same within six weeks or such longer period as is reasonable in the circumstances from receipt of such notice, then and so often as the same may happen it shall be lawful for the Council at any time thereafter and notwithstanding the waiver of any previous right of re-entry to re-enter into and upon the Premises or any part thereof in the name of the whole and thereupon the Term shall absolutely cease and determine but without prejudice to any rights or remedies which may then have accrued to either party against the other in respect of any antecedent breach of any of the covenants herein contained.

5.2 If and whenever during the Term the Lessee (or any one of them) are unable to pay their debts within the meaning of Article 242 of the Insolvency (Northern Ireland) Order 1989 or becomes bankrupt or is wound up or enters into liquidation whether compulsory or voluntary or has a receiver or an administrative receiver appointed, it shall be lawful for the Council to re-enter the Premises or any part of them in the name of the whole at any time (and even if any previous right of re-entry has been waived) and then the Term shall absolutely cease and determine but without prejudice to any rights or remedies which have accrued to the Council against the Lessee or to the Lessee against the Council in respect of any breach of covenant or other term of this Lease (including the breach in respect of which the re-entry is made).

5.3 If after the Lessee has vacated the Premises on the expiry or sooner determination of the Term, if any property of the Lessee (excluding the football pitch, floodlighting and associated property/equipment) shall remain in or on the Premises and if the Lessee shall fail to remove the same within one month after being requested in writing by the Council to do so, the Council may as the agent of the Lessee sell such property and hold the proceeds of sale after deducting the costs and expenses of removal, storage and sale reasonably and properly incurred by the Council to the order of the Lessee, provided that the Lessee will indemnify the Council against any liability incurred by it to any third party whose property shall have been sold by the Council in the bona fide mistaken belief (which shall be presumed unless the contrary is proved) that such property belonged to the Lessee.

- 5.4 The Lessor and the Lessee hereby agree that in the event of any dispute or difference arising between the Lessor and the Lessee which is not resolved by negotiation ( to exclude any disputes or differences arising under the Fourth Schedule hereto) either party may refer the matter to the Law Society of Northern Ireland Dispute Resolution Service ("the Service") and if the matter has not been resolved within 14 days of referral to the Service or such longer period as the Lessor and the Lessee agree, the mediation by the Service shall be deemed to be at an end and each party free to pursue its own remedies.
- 5.5 The parties hereto agree that provided the sustainability targets detailed at Appendix 2 required in connection with this Lease as required by the Council's Director of Parks and Leisure and the various terms and conditions of this Lease been met by the Lessee that the Council may extend the Term herein by a further three years subject to the same terms and conditions herein and subject also to any other further terms and conditions required by the Council. If the Council elects to extend the Term then it shall notify the Lessee in writing one month in advance of the end of the Term.
- 5.6 The Council and the Lessee agree that Article 23 (7) of the Business Tenancies (Northern Ireland) Order 1996 applies hereto and that the Lessee is aware that the Council is a Public Authority within the meaning of the said Order and consequently the Lessee shall have no claim against the Council under the provisions of the said Article 23.
- 5.7 Any notice requiring to be served hereunder shall be sufficiently served in the case of the Lessee if sent by Recorded Delivery to the address shown herein or such other address notified to the Council by the Lessee in the duration of the within Lease and in the case of the Council if addressed to its Chief Executive and sent by Recorded Delivery to or left at the Council's principal office.
- 5.8 This Agreement shall be constructed and applied in accordance with the laws of Northern Ireland and the parties submit to the exclusive jurisdiction of the Courts of Northern Ireland.

## FIRST SCHEDULE

### THE LESSEE'S COVENANTS

#### 1. RENT AND OUTGOINGS

- 1.1 To pay the Rent on the days and in the manner aforesaid without any deductions.
- 1.2 To pay and to indemnify the Council against Value Added Tax chargeable in respect of any Rent or other payment paid or made by the Lessee to the Council under the provisions of this Lease, and against all rates taxes charges assessments duties impositions and outgoings whatsoever to include electricity, telephone and water charges which now are or during the Term shall be charged, assessed, imposed upon or otherwise become payable in respect of the Premises.

#### 2. NO BUILDING

- 2.1 Not to build or permit to be built on the Premises or any part thereof any buildings, erections or constructions except with the prior written approval of the Council and in accordance with all plans and specifications for same submitted to and approved by the Council and as may be directed by the Council.

#### 3. INSURANCE

- 3.1 To insure and keep insured with a reputable insurance company for a sum equal to the full reinstatement value of the Premises (together with an appropriate addition for professional fees) against loss or damage by any of the usual insurable risks for which cover can be obtained in Northern Ireland and whensoever required by the Council to produce to the Council the policy of insurance and the receipt for the current year's premium or reasonable evidence of the terms in force of such policy of insurance and of payment of the premium and in case of destruction of or damage to the Premises by such insured risks during the Term and with all convenient speed to take such steps as may be requisite and proper to obtain any necessary permits and consents under any regulations or enactment for the time being in force to enable the Lessee to rebuild and reinstate the same and as soon as such permits and consents have been obtained to spend and lay out all monies received in respect of such insurance in rebuilding and reinstating the Premises so destroyed or damaged to the reasonable satisfaction and under the supervision of the Council and in the event of such insurance monies proving insufficient as a result of any act neglect or default on the part of the Lessee to make good the deficiency out of the Lessee's own funds.
- 3.2 Not to do anything whereby any policy of insurance on the Premises may become void or voidable wholly or in part.

3.3 To maintain at all times during the Term a Policy of Public Liability Insurance for an amount of not less than Five Million Pounds (£5,000,000.00) with a reputable Insurance Company, and the terms of the Policy to be approved by the Council, and to produce the Policy and receipt for the current years premium to the Council upon demand therefor.

3.4 To maintain at all times during the Term a Policy of Employers Liability Insurance for an amount of not less than five million pounds (£5,000,000.00) with a reputable Insurance Company, and the terms of the Policy to be approved by the Council and to produce the Policy and receipt for the current years premium to the Council upon demand therefor.

4. **CRIMINAL DAMAGE**

4.1 In the event of the Premises suffering malicious damage or destruction during the Term, to take all steps required to obtain payment of the maximum compensation payable under the Criminal Damage (Compensation) (NI) Order 1977 and to apply all compensation paid thereunder in respect of physical damage to the Premises in reinstating the Premises and to the reasonable satisfaction of the Council and obtaining all requisite consents with all due speed and diligence.

5. **REPAIR AND MAINTENANCE**

5.1 To keep the Premises together with all surfaces, structures, sub-structures, lighting columns, boundary walls, fences and landscaped areas and the Pipes therein in good and substantial repair and condition and well cleansed and maintained.

5.2 To maintain and replace any equipment on the Premises as is necessary.

5.3 Not to deposit or permit to be deposited any litter upon the Premises and to leave same in a clean and tidy condition at the end of each period of the Lessee's use and to remove all and other refuse from the Premises at regular intervals.

6. **NO OBSTRUCTION**

6.1 Not to cause or permit any obstruction to the access routes, roads and public walk areas adjoining the Premises and without prejudice to the generality of the foregoing not to park or permit or suffer the parking of vehicles thereon. Parking will only be permitted at designated public parking areas as may be authorised by the Council or available from time to time for public use on the Council's adjoining land.

7. **NO NUISANCE**

7.1 Not to do anything which may be or become a nuisance to the Council or its tenants or the occupiers of adjacent or neighbouring premises.

8. **NO COMBUSTIBLE/INFLAMMABLE ARTICLES ETC**

8.1 Not to store or bring upon the Premises any article substance or liquid of a specially combustible inflammable or dangerous nature and to comply with all recommendations of the insurers and the Northern Ireland Fire and Rescue Service as to fire precautions relating to the Premises.

9. **DISCHARGE**

9.1 Not to discharge into any of the Pipes serving the Premises or any other property any oil, grease or other deleterious matter or any substance which might be or become a source of danger or injury to the drainage system serving the Premises or any other property.

10. **USE**

10.1 To use and occupy the Premises solely and exclusively as a playing pitch and for associated sports and recreational facilities and for no other use or purpose whatsoever.

10.2 Not to use the Premises or any part thereof for any dangerous noxious or offensive trade or business nor for any illegal act or purpose.

10.3 The Lessee shall not use the Premises as a licensed club for the sale or consumption of intoxicating liquor within the meaning of the Registration of Clubs (Northern Ireland) Order 1987.

10.4 The Lessee shall not use the Premises or any part thereof for the benefit of any particular religious body or political group.

11. **SECURITY**

11.1 To provide adequate security measures to keep the Premises secure.



12. **INSPECTION**

12.1 To permit the Council its employees and agents at all reasonable times upon giving reasonable prior written notice to the Lessee to enter such part or parts of the Premises as are necessary to view the condition thereof and upon notice being given by the Council of any defect or want of repair for which the Lessee is liable under the terms of this Lease to repair in accordance therewith.

13. **INDEMNIFICATION**

13.1 To be responsible for and to indemnify the Council against all damage occasioned to the Premises and any adjacent or neighbouring premises of the Council or to any person and to indemnify the Council against all accidents, incidents, actions, claims, proceedings, costs, expenses and demands made against the Council as a result of:-

- (a) any act, omission or negligence of the Lessee or its employees or agents, and
- (b) any breach or non-observance by the Lessee of its covenants and other terms hereof.

14. **RIGHTS**

14.1 To permit the Council at all times during the Term to exercise without interruption or interference any of the rights excepted and reserved to it by virtue of the provisions of this Lease.

15. **NO ASSIGNMENT**

15.1 Not to assign, sublet, alienate or part with possession of the premises or part thereof. Assignment, sub-letting, alienation or parting with possession of the Premises or part thereof shall be subject to the written consent of the Council which consent may be withheld if the Council considers that such assignment, sub-letting, alienation or parting of possession of the Premises or part thereof is incompatible with other uses of either the remainder of the Premises, or any other Council lands or does not fall within the ambit of the Recreation and Youth Service (NI) Order 1986.

16. **SUB-LESSEE**

16.1 The Lessee shall remain responsible for ensuring that the covenants contained within this Lease are adhered to by any Sub-Lessee and in the event that any sub-lease which may be granted (at any time) determining for whatever reason, the Lessee covenants to continue to fulfil its obligations under this Lease including any obligations contained in such funding arrangements as may have been approved in writing by the Council. In the event that the Lessee finds a suitable alternative sub-lessee(s) such sub-lessee(s) must be acceptable under the terms of this Lease and shall be required

to comply with the terms of this Lease including any obligations contained in such funding arrangements as may have been approved in writing by the Council

17. **NO CHARGE**

17.1 Not to charge the Premises or any part thereof without the prior written consent of the Council which consent the Council may withhold if the Council considers such charge not to be in favour of a reputable financial institution or is prejudicial to this Lease and/or the Council's interest herein.

18. **NO SIGNS**

18.1 Not to affix erect attach or exhibit upon any part of the exterior of the Premises any placard poster notice advertisement or sign except such as shall have been previously approved by the Council in writing.

19. **HEAD LEASE**

19.1 To observe and perform the covenants, terms and conditions of the Lease dated 31 December 1990 between Northern Ireland Housing Executive and the Council attached hereto at Appendix 1.

20. **YIELD UP**

20.1 To yield up the Premises at the expiration or sooner determination of the Term in good and tenantable repair and condition and to remove all equipment and items from the Premises as directed by the Council and to reinstate the Premises to the same condition as the Premises were in at the Possession Date.

21. **STAMP DUTY**

21.1 To pay the stamp duty land tax payable on this Lease and the Counterparts thereof and to deliver up one Counterpart to the Council after registration.

22. **CONVEYANCING ACT 1881**

22.1 To pay all costs charges and expenses reasonably incurred by the Council for the purposes of the preparation and service of a valid notice under S.14 of the Conveyancing Act 1881 requiring the Lessee to remedy a breach of any of the covenants herein contained for which the Lessee is liable notwithstanding that forfeiture for such breach shall be avoided otherwise than by relief granted by the Court.

23. **NO APPOINTMENT**

23.1 That any appointment of a new Trustee or new Trustees shall be notified to the Council within 21 days of any such appointment and copies of all Deeds of Appointment of Trustees shall be delivered up to the Council within 21 days.

24. **NO VARIATION**

24.1 That no variation to the Lessees Constitution and Rules shall be made without the prior written consent of the Council and copies of all new Constitution and Rules shall be delivered up to the Council within 21 days of coming into force.

25. **EASEMENTS ETC**

25.1 To use its best endeavours to prevent any easement or right belonging to or used with the Premises from being obstructed or lost and at the request of the Lessor and at the Lessee's expense to take all necessary steps to prevent any encroachment upon the Premises or the acquisition of any new right to light passage drainage or other easement over upon or under the Premises and to give notice to the Lessor as soon as the Lessee becomes aware thereof of any threatened encroachment or attempt to obstruct or acquire any such right or easement.

26. **INTENTION TO QUIT**

26.1 To give to the Lessor notice in writing of not less than 3 months of their intention to quit should the Lessee cease using the Premises as playing fields and is desirous of surrendering this Lease without prejudice to clause 20 herein.

27. **SECTION 75 NORTHERN IRELAND ACT 1998**

27.1 The Council has a duty pursuant to Section 75 of the Northern Ireland Act 1998 in carrying out its functions to have due regard to the need to promote equality of opportunities between different classes of persons, including persons of different religious belief and political opinion.

27.2 The Council is also required by virtue of Section 75 to promote good relations between persons of different religious belief, political opinion or racial group. In order to act in accordance with Section 75, the Council requires the Lessee to undertake not to use the Premises or any part thereof for the benefit of any particular religious body or political grouping or to discriminate against any particular racial group and the Lessee hereby undertakes to do so.

## SECOND SCHEDULE

### THE COUNCIL'S COVENANTS

1. That the Lessee paying the Rent hereby reserved and observing and performing the covenants on it's part and conditions herein contained shall peaceably and quietly hold and enjoy the Premises without any lawful interruption or disturbance from or by the Council or any person lawfully claiming under or in trust for it.
2. To permit the Lessee at all times during the Term to exercise without interruption or interference any of the Rights granted to it by virtue of the provisions of this Lease.

## THIRD SCHEDULE

### THE EXCEPTIONS

1. The free passage and running of water, soil gas, electricity and other services from and to adjoining and neighbouring land and the buildings now or hereafter erected thereon in and through the Pipes laid made (or to be laid and made) in upon through or under the Premises and the free and uninterrupted use of all gas, electric, telephone and other Pipes serving such adjoining and neighbouring land and buildings now or at any time during the Term upon through or under the Premises.
2. The right at any time during the Term upon the giving of reasonable notice to the Lessee (except in case of emergency) to enter upon the Premises in order to inspect cleanse repair and where necessary renew the Pipes referred to in paragraph 1 of this Schedule where such works cannot otherwise be reasonably carried out without such entry, the Council causing as little inconvenience and disturbance to the Lessee as is reasonably practicable and making good as soon as practicable all damage occasioned to the Premises in the exercise of such rights.
3. Full right and liberty at any time hereafter and from time to time to execute works and erections upon or to alter or rebuild any of the buildings erected on the Council's adjoining or neighbouring lands and to use such adjoining or neighbouring lands and the buildings now or hereafter erected thereon in such manner as it shall think fit.

**PROVIDED** that in exercising any of the foregoing exceptions and reservations in this Third Schedule the Council shall cause as little interference as possible to the Premises and shall as soon as practicable make good any damage caused to the Premises by the exercise of the said exceptions.

## FOURTH SCHEDULE

### RENT REVIEW

1. The first rent review shall be on the fifth anniversary of the Rent Commencement Date and every succeeding fifth anniversary of same. The initial yearly rent of £200.00 referred to in clause 1.8 shall be increased in the same proportion as the increase in the Retail Prices All Items Index ('the Index') published by the Office for National Statistics or any successor Office/Department between the figure shown therein for the month which is two clear calendar months prior to the commencement of the Term and the month which is two clear calendar months prior to the relevant rent review date and any such reviewed rent shall be an amount equal to the greater of the rent payable immediately prior to the relevant review date or the revised rent subject as hereinafter mentioned.
2. In the event of any change after the date of the commencement of the Term in the reference date used to compile the Index the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the reference base current at the said date had been retained.
3. If it becomes impossible by reason of any change after the date hereof in the methods used to compile the Index or for any other reason whatsoever to calculate the additional sum by reference to the Index or if any dispute or question whatsoever shall arise between the parties hereto with respect to the amount of the additional sum or with respect to the construction or effect of this Schedule or as to the respective rights, duties and obligations of the parties under or as to any other matter arising out of or connected with the subject matter of this Schedule (or the Lease terms generally) shall if either the Council or the Lessee so requires at any time by notice served on the other ('the Arbitration Notice') be referred to the decision of an arbitrator ('the Arbitrator') and the arbitration shall be conducted in accordance with the Arbitration Act 1996 (and any statutory extension or modification thereof).
4. The Arbitrator shall be appointed by agreement between the Council and the Lessee or (if within 10 working days after service of the Arbitration Notice the Council and the Lessee have been unable to agree) then on the application of either party such Arbitrator to be appointed by the Chairman of the Royal Institution of Chartered Surveyors in Northern Ireland.
5. If and so often as the rent in respect of any period has not been ascertained pursuant to the foregoing provisions before the first day hereby appointed for payment the Lessee shall continue to pay at the rate equal to the rent payable immediately before the commencement of the relevant period (such payments being on account of the rent for that period) until the first day of payment of the rent after the rent for that period has been ascertained and the Lessee shall pay the difference between the rent due and the rent already paid.

## FIFTH SCHEDULE

### THE RIGHTS

1. The right to the free passage and running of water, soil, gas, air, electricity, telephone and other services or supplies to and from the Premises through all the Pipes now made (or to be made) and passing under or along the adjoining land of the Council together with the right at any time during the Term upon the giving of reasonable notice to the Council to enter upon the adjoining land of the Council to inspect cleanse repair and where necessary renew and maintain the Pipes where such works cannot otherwise be reasonably carried out without such entry, the Lessee causing as little inconvenience and disturbance to the Council as is reasonably practicable and making good as soon as practicable all damage occasioned to the adjoining land of the Council in the exercise of such rights.





# APPENDIX 1

Head Lease



Blackmountain Primary School

Blackmountain Nursery School

BLACK MOUNTAIN PLACE

BLACK MOUNTAIN PARK

Playground

SPRINGMARTIN ROAD

BLACK MOUNTAIN PARADE

Mast

MAP REFERRED TO

BELFAST CITY COUNCIL to  
TRUSTEES OF SPRINGFIELD STAR-BLACKMOUNTAIN

LAND AT BLACKMOUNTAIN PARK, BELFAST

Based on the Ordnance Survey of Northern Ireland map with the permission of the Director & Chief Executive. © Crown Copyright.

Scale 1:1250

Produced by:-

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Estates Management Unit,  
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Property & Projects Dept.,  
Adelaide Exchange,  
24-26 Adelaide Street,  
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Date:-

1/07/2013

Area 0.613 acres