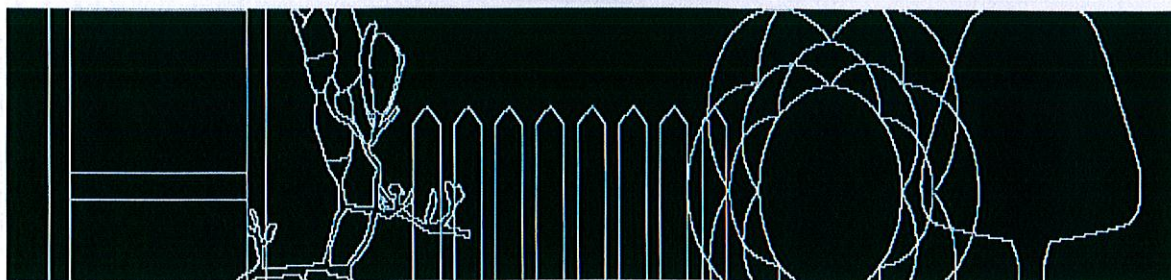




DEED OF LICENCE

Balmain (R91327) Reserve Trust
(Licensor)

Little Nicholson Street Play Centre Inc
(Licensee)



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CONTENTS

1. DEFINITIONS AND INTERPRETATION
2. GRANT OF LICENCE
3. CROWN LANDS ACT 1989
4. TERMINATION ON REVOCATION OF RESERVE
5. LENGTH OF LICENCE
6. WHAT THE LICENSEE MUST PAY COUNCIL
7. WATER, ELECTRICITY AND OTHER SERVICES
8. USE OF THE PREMISES
9. CROWN RESERVE – PUBLIC ACCESS
10. THE LICENSEE'S ADDITIONAL OBLIGATIONS
11. INSURANCE AND RISK
12. NO ASSIGNMENT
13. LICENSOR'S RIGHTS
14. EXCLUSIVE USE
15. DEFAULT
16. DESTRUCTION OF PREMISES
17. GENERAL
18. OPTION TO RENEW

REFERENCE SCHEDULE

EXECUTION

1/10/2015

DEED OF LICENCE

DATED

22 May 2013

Between

BALMAIN (R91327) RESERVE TRUST of which **Leichhardt Municipal Council** ABN 92 379 942 845 of 7-15 Wetherill Street, Leichhardt, New South Wales 2040 is the Reserve Trust Manager ("**Licensor**")

and

LITTLE NICHOLSON STREET PLAY CENTRE INC ABN of [] ("**Licensee**")

RECITALS:

- A Balmain (R91327) Reserve is a reserve for Children's Playground and Community Centre, gazetted on 1 December 1978.
- B The Licensor has resolved, at the request of the Licensee, to grant the Licensee a licence to use the Premises for the Permitted Use on the terms and conditions of this deed, subject to the consent of the Minister.

AGREEMENTS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Except where the context does not permit, where commencing with a capital letter:

"**Act**" means the Crown Lands Act, 1989.

"**Commencing Date**" means the date this licence starts being the date in Item 4.

"**Council**" mean Leichhardt Municipal Council ABN 92 379 942 845. Where the context requires, it means Council in its capacity as manager of the Reserve Trust and/or Council in its capacity as the local authority, and includes its authorised employees and agents.

"Consumer Price Index" means the Consumer Price Index - All Groups for Sydney published by the Australian Bureau of Statistics or the index officially substituted for it.

"CPI Adjustment Date" means each date in Item 7.

"Current CPI" means the Consumer Price Index number for the quarter ending immediately before the relevant CPI Adjustment Date.

"Default Rate" means the current annual percentage rate payable in respect of outstanding Council rates in the Council area.

"Development Consent" means the consent and conditions of consent to the development application numbered (by Council) D/2005/354 as modified by the consent and conditions of consent to the s.96 application numbered (by Council) M/2006/698.

"GST" means goods and services tax and in respect of GST, terms defined in *A New Tax System (Goods and Services Tax) Act, 1999* have the same meanings when used in this Licence.

"Item" means an item in the Reference Schedule to this Licence.

"Licence Fee" means the amount per annum specified in Item 6, adjusted in accordance with clause 6.2.

"Licensor" means the Licensor under this Licence being the Balmain (R91327) Reserve Trust and in respect of the Licensee's Obligations or the Licensor's rights, where the context permits includes Council and its employees and authorised agents, the Crown, the State Government of New South Wales, the Minister, his Department and their employees and authorised agents.

"Minister" means the Minister for the time being administering the Act or any legislation consolidating or replacing the Act.

"Obligations" means the Licensee's covenants, responsibilities, duties and obligations under this Licence and at law.

"Permitted Hours" means the hours set out in Item 9 .

"Permitted Use" means the uses set out in Item 8.

"Premises" means the Premises set out in Item 3 .

"Previous CPI" means the Consumer Price Index number for the quarter ending immediately before the previous CPI Adjustment Date (or, if there has not been a previous CPI Adjustment Date, the Commencing Date).

"Term" means the term of this Licence, being 5 years starting on the Commencing Date and ending on the Terminating Date unless terminated earlier in accordance with this Licence, plus where the context permits any period of holding over.

"Terminating Date" means the date in Item 5.

Where a word or phrase is given a defined meaning, another part of speech or other grammatical form of that word or phrase has a corresponding meaning.

1.2 Interpretation

Unless the contrary intention appears:

- a) the singular includes the plural and vice versa;
- b) a gender includes the other genders;
- c) "person" includes a firm, a body corporate, an unincorporated association or an authority;
- d) an agreement, representation or warranty:
 - (i) in favour of 2 or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of 2 or more persons binds them jointly and severally; and
- e) a reference to:
 - (i) a person includes the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
 - (ii) this or another document includes any variation or replacement of it;
 - (iii) this licence includes this licence and any extension of it or holding over under it;
 - (iv) a thing includes the whole and each part of it;
 - (v) a date includes that date;
 - (vi) a group of persons includes all of them collectively, any 2 or more of them collectively and each of them individually;
 - (vii) the president of a body or authority includes any person acting in that capacity; and
 - (viii) a statute, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

1.3 Headings

Headings must be ignored in the interpretation of this licence.

1.4 Contra Preferentum

No rules of construction apply to the disadvantage of any party responsible for preparation of this licence or any part of it.

1.5 If Licensee not to do anything

If the Licensee must not do something in connection with this Licence, the Licensee:

- a) must not do anything which may result in it happening; and
- b) must ensure that its members, agents, invitees, patrons and contractors do not do it and do not do anything which may result in it happening.

2. GRANT OF LICENCE

Council grants a licence to the Licensee to use the Premises on the terms of this deed, subject to the consent of the Minister.

3. CROWN LANDS ACT 1989

This Licence is subject to the provisions of the Crown Lands Act 1989 including section 109 of the Act (relating to revocation of the Premises or part from the Reserve) and is conditional on the Minister consenting to this Licence under section 102 of the Act. The Licensor and the Licensee expressly acknowledge that no rights or interests are conferred on the Licensee by this Licence unless the Minister has granted consent to this Licence under s.102 of the Act. The Licensor must promptly seek the Minister's consent to this licence.

4. TERMINATION ON REVOCATION OF RESERVE

This Licence terminates immediately on the revocation of the whole or any part of the Premises from the Reserve, so far as regards the part of the Premises included in such revocation, and neither the Licensee nor any other person is entitled to any compensation from the Licensor, Council, the Crown, the State Government of New South Wales, the Minister, his department or any of their employees or authorised agents on account of the revocation and subsequent termination, without affecting the rights of either party in respect of any antecedent breach of this Licence, provided however that if the revocation is of part only of the Premises, the Licence Fee payable under this Licence for the balance of the Premises will be reduced proportionally.

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5. LENGTH OF LICENCE

5.1 Term of licence (5 years)

This licence starts on the Commencing Date and ends on the Terminating Date, unless terminated earlier as provided in this deed.

5.2 Holding Over

If the Licensee continues to occupy the Premises after the end of this Licence with the Lessor's prior approval, the Licensee does so under a Licence from month to month which either the Lessor or the Licensee may terminate on one month's notice ending on any date **provided that** the period of holding over may not exceed 12 months. The monthly tenancy is on the same terms as this Licence (including but not limited to review of the Licence Fee under clause 6.2) except for those changes which are necessary to make the Licence appropriate for a monthly Licence.

6. WHAT THE LICENSEE MUST PAY TO THE LICENSOR

6.1 Licence Fee

The Licensee must pay the Licence Fee to the Licensor annually in advance on or before the Commencing Date and each anniversary of the Commencing Date.

6.2 Consumer Price Index adjustment

- a) The Licence Fee will be reviewed on each CPI Adjustment Dates. On and from each CPI Adjustment Date, the Licence Fee will be the Licence Fee payable immediately before that CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.
- b) If Consumer Price Index numbers cease to be published by the Australian Bureau of Statistics and no similar index is substituted for it but percentage changes are published, then on each CPI Adjustment Date the Licence Fee will be increased by the percentage change for the previous 12 months published immediately prior to the relevant CPI Adjustment Date.
- c) If the Current CPI is not available at the relevant CPI Adjustment Date, or if the Licensor has not advised the Licensee of the reviewed Licence Fee, the Licensee must continue to pay the Licence Fee at the rate applicable immediately prior to the relevant CPI Adjustment Date until the Current CPI is available and the Licensor has advised the Licensee of the amount of the reviewed Licence Fee. On the first day for payment of Licence Fee after the Licensor has advised the Licensee of the amount of the reviewed Licence Fee to apply from the relevant CPI Adjustment Date, the Licensee must pay the difference between what

the Licensee has paid on account of the reviewed Licence Fee and the reviewed Licence Fee for the period from and including the relevant CPI Adjustment Date to but excluding that day on which the Licence Fee is payable. Any delay by the Licensor in making the calculations under clause 6.2(a), (b) or (c) or in advising the Licensee of the reviewed Licence Fee does not prejudice the Licensor's right to recover nor the Licensee's obligation to pay the reviewed Licence Fee under clause 6.2(a) on and from the relevant CPI Adjustment Date.

6.3 Rates and taxes

The Licensee must reimburse the Licensor on demand for any rates and taxes payable by the Licensor or Council in respect of the Premises, on an area basis if separate assessments have not been issued, and in respect of land tax will be at the rate as if the Reserve were the only land owned or controlled by the Licensor

6.4 GST

Unless otherwise indicated, the Licence Fee, costs and other amounts payable by the Licensee under this Licence are expressed exclusive of GST. If any GST is payable on or in respect of any supply made under or in connection with this Licence, the recipient of the supply must pay to the supplier of the supply, in addition to and at the same time as it pays the consideration for such supply, a further amount equivalent to the GST payable in respect of that supply. The supplier of the supply must issue a tax invoice to the recipient of the supply.

6.5 Costs, charges and expenses

In connection with this Licence the Licensee must pay promptly:

- a) the costs of everything the Licensee must do;
- b) on demand, the Licensor and Council's reasonable costs, charges and expenses including those for negotiating, preparing and executing, this Licence (in the amount set out in Council's Schedule of Fees and Charges), obtaining any consents the Licensor must obtain before granting this Licence, giving approvals, considering requests for approvals, enforcing this Licence and exercising rights; and
- c) all costs, charges and expenses in connection with works the Licensee carries out.

6.6 Interest on Overdue Money

If the Licensee does not pay any amount payable by the Licensee under this Licence on time, the Licensee must pay interest on that amount on demand by the Licensor from when it becomes due for payment until it is paid. Interest is calculated on daily balances at the Default Rate.

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7. WATER, ELECTRICITY AND OTHER SERVICES

The Licensee must pay in respect of the Premises all charges for electricity, gas, removal of garbage, power, water usage and trade waste as and when they fall due. The Licensee must at its cost arrange for separate metering for utilities, and otherwise must pay the amount estimated by the Licensor as referable to the Premises.

8. USE OF PREMISES

8.1 Permitted Use

The Licensee may use the Premises only for the Permitted Use.

8.2 Hours of Operation

The Premises may be used only on the days and during the Permitted Hours specified in the Development Consent and repeated in Item 9. The Premises must not be used, and the Licensee must not open the Premises or go onto the Premises or permit others to use or enter the Premises, on Sundays or Public Holidays or outside the Permitted Hours on other days **provided however** that contractors undertaking repair or maintenance works are allowed onto the Premises to do such work outside the operating hours, but not prior to 7am or after 7pm or on Sundays and subject to not causing noise or nuisance to neighbours except in the case of emergency or sudden danger when contractors may access the Premises at any time to undertake emergency work.

8.3 Parties for children under 5 years old

The Premises must not be used or hired or made available for parties or social events except for birthday parties or similar parties for children under 5 years old on Saturdays subject to the following conditions.

- a) The setting up for the party, the party and the clean up after the party can only be during the Permitted Hours. On Saturdays, this is only to be between 9.00am and 5.00pm. Party hosts and organisers must not enter the Premises or commence setting up for the party prior to 9:00am on Saturday and all cleaning up must be completed and all persons must have vacated the Premises by 5:00pm on that Saturday.
- b) There must not be more than 15 children on site at the time of the party, or during the setting up and cleaning up. There must not be more than 45 people in total, including the children, on the Premises.
- c) There must not be any entertainments, equipment or amusements such as jumping castles or rides. However, single entertainers such as one

clown are allowed provided that they have their own insurance against injury or damage or are covered by the Licensee's insurance.

- d) There must not be any amplified music or announcements. Non-amplified music for party activities, such as pass the parcel, are allowed.

8.4 Short term hiring for children's parties

The Licensee may hire out the Premises for a fee for short periods of less than one day for the purpose of parties for children under 5 years old and in addition to the conditions set out in clause 8.3:

- a) the Licensee must ensure that the hirer complies with the conditions of this Licence whilst using the Premises; and
- b) the Licensee and the hirers must comply with the Development Consent; and
- c) the hiring charges must be reasonable and are subject to approval of the Licensor (acting reasonably). The Licensee must have standard charges, which can be different for annual or short term members, non-members, number of attendees and other objective matters, but cannot be altered for particular people on a discriminatory or subjective basis; and
- d) the Licensee may charge hirers a security bond against damage; and
- e) the Licensee's Obligations are not affected by such hirings.

The Licensee must not hire out the Premises for adults' parties or for any purpose except parties for children less than 5 years old as set out in this licence and the Development Consent.

8.5 Special events

Despite clause 8.2, the Licensee may conduct at the Premises:

- a) up to 4 special social or fundraising events in each year of the Term. These must be held only during the Permitted Hours, except for the annual Christmas party which may extend to 7.00pm on a Saturday in December; and
- b) up to 4 parent education/ training or committee meetings, each with a maximum of 12 attendees, in each year of the Term; and
- c) up to for 4 weekend 'working bees' in each year of the Term for members of the Licensee to maintain the Premises.

These are not to accumulate and do not carry over to the following year. If the Licensee conducts less than 4 per year of any of the above special events, it is still limited to a maximum of 4 in the following year.

8.6 Modification to Development Consent

The above clauses 8.2 to 8.5 reflect the conditions of consent in the Development Consent. If the Development Consent is further modified in respect of the matters set out in those clauses, then the above clauses are deemed to be similarly modified.

8.7 No Smoking

The Licensee must not permit, and must take steps to prevent, smoking of cigarettes or cigars or other use of tobacco products in any part of the Premises, inside or outside any buildings, at any time. The Licensee must erect signs at the Premises indicating that the entire Premises are non – smoking areas.

9. CROWN RESERVE – PUBLIC ACCESS

9.1 Acknowledgement

The Licensee acknowledges that as the Premises are the major part of a Crown reserve, there are legal requirements regarding public access and cost.

9.2 Lessee's Constitution

The Licensee's Constitution, as at the date of its incorporation on 8 November 2000:

- a) must within 6 month of the Commencing Date be amended by:
 - I. deleting clause 3d) ("The committee may determine whether or not to accept an application for membership. The committee is not required to supply reasons for accepting or rejecting an applciaiton for membership.") and replacing it with:
 - "3d) The committee is to determine whether or not to accept an application for membership provided however that an application from a resident of the Municipality of Leichhardt (with the care of a child or children aged 0-5) must be accepted for membership unless there is a good reason for rejecting the application. If the committee rejects an application for membership from a resident of the Municipality of Leichhardt, the committee must provide written reasons for its rejection of the application

and forward a copy to Leichhardt Council as manager of the Balmain (91327) Reserve Trust."

- II. inserting in clause 3e) after "general meeting" at the end of the first sentence, the words:

"and approved by Council (acting reasonably)."

- b) must not otherwise be amended except with the Licensor's prior written consent. Any proposed change to the Licensee's Constitution is to be forwarded in writing by the Licensee to the Licensor with a request for consent, which cannot be unreasonably withheld or delayed by the Licensor.

9.3 Licensee's Terms and Conditions

The Licensee's objects and rules, terms and conditions, or similar, of its association, for its members and for use of the Premises are subject to the approval of the Licensor and cannot be altered, added to or have parts deleted without the Licensor's prior written consent. Any proposed change to the objects and rules, or terms and conditions, or similar, is to be forwarded in writing by the Licensee to the Licensor with a request for consent, which cannot be unreasonably withheld or delayed by the Licensor.

9.4 Short term membership

In addition to annual or other periodic membership, the Licensee must have provision for short term membership to enable, for example, local grandparents to bring their visiting grandchildren during school holidays.

9.5 Fees

Whenever any of the fees charged by the Licensee are proposed to be changed, the Licensee must, without demand and before the change takes effect, forward to the Licensor in writing details of all fees proposed to be charged. If required by the Licensor, the Licensee must provide justification for the amount of the fees or the increase in the fees. The fees, or the fee increase must be reduced if required by the Licensor in writing **provided** that the Licensor must act reasonably and have regard to the Licensee's operating costs and expenses, amounts to be paid into a sinking fund and amounts being saved for the purchase of new equipment and other items for use at the Premises. The Licensee should have standard fees with the different fees based on objective criteria, and is not to waive, reduce or increase fees to any particular person on a discriminatory or subjective bases **provided** however that the Licensee may (and is encouraged by the Licensor to) reduce fees or allow payment of fees over a longer than normal time period if the Licensee, acting in good faith, believes that payment may cause hardship or may prevent a local resident from being a member of the Licensee or using the play centre.

9.6 Non-profit community association

- a) The Licensee is and must remain a non-profit incorporated association. The Licensee must conduct its operations on a non-profit basis. The Premises are not to be used for financial reward to or for the private benefit of any person (other than as a member of the Licensee).
- b) Fees and charges paid to the Licensee must only be used in connection with the Premises and the play centre conducted in the Premises (including any sinking fund or provision for future purchases of equipment.) The Licensee must not remit any of the fees and charges or other income received by it to any other organisation or a "head office" nor make donations to any person or pay any part of its money for any purpose other than as reasonably connected with the Premises.
- c) Officebearers of the Licensee must be volunteers and must not be paid for their services. Members of the Licensee and other persons must not be employed or contracted or paid by the Licensee for any work or activities undertaken by them in administration or in the operation of the play centre or similar. However, officebearers and other members are entitled to be reimbursed by the Licensee for expenses incurred and the Licensee may at its cost effect insurance for the officebearers in that role and for them and other voluntary workers.

This clause does not prohibit the employment or contracting of tradesmen or others to undertake repairs or maintenance or work to the Premises, nor of legal or accounting or other professional services in connection with this Licence or the Premises or the Licensee's operation of a play centre in the Premises, on usual conditions and for usual charges.

9.7 Financial and other information

If and when requested by the Licensor (but not more than once in every 12 month period for each type of information), the Licensee must promptly give to the Licensor true copies of the Licensee's membership list, financial accounts (including but not limited to its balance sheet and profit and loss statement) for its most recent financial year, minutes of meetings of its officebearers and minutes of its general meeting.

9.8 Advertising

The Licensor may advertise the Play Centre conducted by the Licensee at the Premises and may direct interested local residents to the Licensee to obtain further information or to apply for membership. If required by the Licensor, the Licensee must from time to time advertise the Play Centre and that membership of the Licensee is open to all members of the public subject to the Licensee's Constitution and Terms and Conditions and payment of fees.

9.10 Acknowledgements and signage

The Licensee acknowledges that:

- a) the Licence Fee is the minimum payable by a non-profit community group for part of a crown reserve and is substantially less than the market rate for the Premises, and that this reduced fee represents a subsidy to the Licensee; and
- b) that the Council has previously undertaken extensive capital work, and has provided funding to the Licensee to undertake work, at the Premises.

If required by the Licensor, the Licensee must erect, or permit the Licensor to erect, signage at the Premises acknowledging these subsidies and contributions by the Licensor, the Council and/or the Minister and his department.

The Licensor and Council are not obliged to undertake any further work to the Premises or provide other funding except as set out in this licence. (The Licensee may apply for grants in accordance with Council's requirements, separate from this licence.)

10. THE LICENSEE'S ADDITIONAL OBLIGATIONS

10.1 Obligations

During the Term the Licensee must:

- a) maintain the Premises, including all buildings in the Premises, and keep them in good repair, having regard to the condition of the Premises at the Commencing Date; and
- b) keep the Premises and everything in them clean, tidy and free of pests; and
- c) not create or permit a nuisance and take all proper and reasonable steps to prevent any undue noise, disturbance of neighbours, or disorderly or unseemly conduct on the Premises; and
- d) not install nor permit, allow or suffer any amusement devices to be used or installed on the Premises without the Licensor's prior consent which consent will be at the Licensor's complete discretion; and
- e) ensure that any electrical services are installed or provided by a competent and licensed electrician and keep the same in proper repair subject at all reasonable times to inspection by or supervision of a competent and licensed electrician (approved by the Licensor); and

- f) not take nor permit to be taken any intoxicating liquors onto the Premises; and
- g) not put up signs, notices, advertisements (other than as required by law or this Licence), exterior blinds, awnings, antennae or receiving dishes without the prior approval of the Licensor and, if required, any other person or authority; and
- h) not keep nor permit to be kept any animals on the Premises (other than guide dogs for sight or hearing impaired persons or other assistance dogs for persons with a disability); and
- i) not store or use inflammable, volatile or explosive substances on the Premises (other than reasonable quantities of required cleaning products); and
- j) not do anything to overload the floors of any structure on the Premises nor use them for anything other than their intended purpose; and
- k) at all times take all such precautions as are necessary to protect the health and safety of all persons on the Premises and must comply with the requirements of the Occupational Health and Safety Act, 1983 (NSW), and any amendments or re-enactments thereof, and of any other Acts, Regulations or Orders pertaining to the health and safety of employed persons; and
- l) comply with all notices served by any government department or competent authority or any local or public authority in connection with the Premises, except so far as such notices may require structural alterations which will be the responsibility of the Licensor unless such notices arise from the Licensee undertaking any unauthorised work to the Premises or not undertaking work properly in which case the Licensee must undertake the structural work to comply with the notice; and
- m) vacate the Premises at the end of the Term and leave them in a condition satisfactory to the Licensor, acting reasonably, having regard to the Licensee's Obligations; and
- n) at the end of the Term, leave undisturbed all works, capital improvements, fences, structures, fixtures, fittings, water, gas, electric and other fixtures and fittings which are now or may be put into or upon the Premises by the Licensor or by the Licensee with the approval of the Licensor, which are or become part of the Premises and the property of the Licensor. (The Licensee may remove its furniture, toys, play equipment and other chattels.)

10.2 No Alterations Without Consent

The Licensee must not carry out any alterations or additions to the Premises or the buildings in the Premises without the Licensor's prior approval. If the Licensor gives approval, the Licensor may impose conditions.

10.3 Licensee's Works

The Licensee must ensure that any alterations or additions the Licensee does (for which the Licensor's prior approval is required) are done:

- i. with all necessary approvals from all relevant authorities; and
- ii. in a proper, good and workmanlike, and professional manner; and
- iii. in accordance with all laws and requirements of authorities.

10.4 Redecoration

The Licensee must redecorate the Premises as and when specified in Item 10.

11. INSURANCE AND RISK

11.1 Insurance

The Licensee must:

- a) maintain with insurers and on terms approved by the Licensor, in the names of the Licensee, the Licensor, Council, the Crown, the State Government, the Minister and his department, and any other person named by Council (acting reasonably):
 - I. public liability insurance for at least the amount in Item 11 (as varied by notice from Council to the Licensee); and
 - II. insurances required by law; and
 - III. other insurances which, in Council's reasonable opinion, the Licensee should take out, as notified by the Licensor to the Licensee.
- b) on or before the Commencing Date, and on every anniversary of the Commencing Date throughout the Term, give the Licensor evidence that the Licensee has complied with clause 11.1(a); and
- c) notify the Licensor immediately if any insurance policy required by clause 11.1(a) is cancelled or an event occurs which may allow a claim

or affect rights under an insurance policy in connection with the Premises or the Licensee's property.

11.2 Indemnities

The Licensee is liable for and indemnifies the Licensor, Council, the Crown, the State Government of New South Wales, the Minister, his department and their employees and authorised agents against liability or loss arising from, and costs incurred in connection with:

- a) costs, claims, damage, loss, injury or death occurring in the Premises, or in connection with or arising from the Premises or the Licensee's Property or this Licence, or caused or contributed to by the Licensee's act, omission, negligence or default or the act, omission, negligence or default of any member of the Licensee or any invitee of the Licensee, except, in respect of each indemnified party, to the extent that it is contributed to by that party's wrongful act or omission, negligence or default; and
- b) anything the Licensor does which the Licensee must do under this Licence but which the Licensee has not done or has not done properly.

11.3 Releases

The Licensee occupies the Premises at its own risk and releases the Licensor, Council, the Crown, the State Government of New South Wales, the Minister, his department and their employees and authorised agents from, and agrees that they are not liable for, liability or loss arising from, and costs incurred in connection with:

- a) damage, loss, costs, injury or death, except, in respect of each released party, to the extent that it is contributed to by that party's wrongful act or omission, negligence or default;
- b) anything the Licensor is permitted or required to do under this Licence;
- c) the total or partial destruction of the Premises, the revocation of the Premises from the reserve or resumption of the Premises by reason of any law, a requirement of any constituted authority, or other cause outside the Licensor's control; and
- d) any failure of water, gas, electricity or other services to the Premises.

11.4 Indemnities Separate

Each indemnity is independent from the Licensee's other Obligations and continues during and after the end of this Licence. The Licensor may enforce an indemnity before incurring expense.

12. NO ASSIGNMENT

12.1 No interest in land

The rights granted under this licence are personal to the Licensee only and do not give the Licensee any interest in the land of which the Premises are part.

12.2 No Assignment

The Licensee must not assign or purport to assign this licence or its interest under this licence or the Premises.

12.3 No sub-licence without Consent

Except as set out in clause 8.4, the Licensee must not sub-licence, grant any sub-licence (exclusive or non-exclusive), let, hire, part with possession of or otherwise deal with or dispose of the Premises or any part of the Premises or this Licence or any rights hereunder without the prior consent of the Licensor which may be granted or withheld or granted with conditions in the Licensor's absolute discretion and subject to the consent of the Minister.

13. LICENSOR'S RIGHTS

The Licensor and its authorised agents may:

- a) do any works on the Premises it considers necessary and will take reasonable steps (except in emergencies) to minimise interference with the Licensee's use of the Premises. The Licensor is not obliged to do any work to or on the Premises except as set out expressly in this Licence.
- b) enter the Premises at reasonable times on reasonable notice to see if the Licensee is complying with the Licensee's Obligations under this Licence or to do anything the Licensor must or may do under this Licence or to comply with the requirements of any public or regulatory authority.
- c) if there is an emergency, enter the Premises without notice.
- d) if there is an emergency, stop the Licensee from entering the Premises.
- e) after giving the Licensee reasonable notice of what is to be done, do, at the Licensee's cost, anything which the Licensee should have done under this Licence but which the Licensee has not done or which the Licensor considers the Licensee has not done properly.

14. EXCLUSIVE USE

The Licenser agrees that the Licensee has exclusive use of the Premises subject to this Licence, to the Licensee complying with its Obligations and to the Licenser's rights under this Licence.

15. DEFAULT

15.1 Licenser's right to end this Licence

The Licenser may end this Licence by notice to the Licensee if the Licensee:

- a) repudiates its Obligations under this Licence; or
- b) does not comply with an essential term of this Licence; or
- c) ceases to exist; or
- d) assigns or purports to assign any of its interests under this Licence or grants or purport to grant any sub-licence of any part of the Premises without the Licenser's prior consent; or
- e) does not comply with an Obligation under this Licence which is not an essential term and, in the Licenser's reasonable opinion:
 - i. the non-compliance can be remedied, but the Licensee does not remedy it within a reasonable time (not more than 28 days) after the Licenser gives it notice to remedy the non-compliance; or
 - ii. the non-compliance cannot be remedied but the Licenser can be compensated and the Licensee does not pay the Licenser reasonable compensation for the breach within a reasonable time after the Licenser gives the Licensee notice to pay it.
 - iii. the non-compliance cannot be remedied or compensated for.

15.2 If Licence ends

If this Licence ends under clause 15.1:

- a) the Licensee indemnifies the Licenser, Council, the Crown, the State Government of New South Wales, the Minister and his department against any liability or loss arising and any cost incurred (whether before or after termination of this Licence) in connection with the Licensee's breach and the end of this Licence including the Licenser's and other indemnified parties' loss of the benefit of the Licensee performing its Obligations under this Licence (including but not limited to providing the Services) from the date that the Licence ends until the Terminating Date; and

- b) the Licensor must take reasonable steps to mitigate its loss.

15.3 Acceptance of Licence Fee not Waiver

Demand for or acceptance by the Licensor of the Licence Fee or other moneys due under this Licence after termination for default does not operate as a waiver of the breach or of the termination and does not reinstate the Licence.

16. DESTRUCTION OF PREMISES

If the Premises or any part thereof are at any time during the Term destroyed or damaged by fire, lightning, storm or tempest or other similar or analogous cause so as to render the same unfit for the occupation and use of the Licensee, then:

- a) a fair and just proportion of the Licence Fee according to the nature and extent of the damage or destruction sustained must abate as from the date the Premises are rendered unfit until either the damage is repaired and the Premises are restored or this Licence is terminated in accordance with sub-clause (b), unless such damage or destruction was caused or contributed to by the wrongful or negligent act or omission of the Licensee, its servants, agents or contractors; and
- b) the Licensor may, within 3 months from the date of such destruction or damage, by notice to the Licensee terminate this Licence, and the Licensee has no claim against the Licensor, Council, the Crown, the State Government of New South Wales, the Minister, his department or their employees or authorised agents as a result of or connected with such termination but without prejudice to the rights of any of them for any antecedent breach.

17. GENERAL

17.1 Notices and approvals

A notice, consent or approval:

- a) must be:
 - i. in writing; and
 - ii. in English; and
 - iii. delivered to a party or left at or posted by certified mail to the address of or sent to the facsimile number or email address of the party as set out in Item 12, as later varied by notice to the other party;
- b) is taken to be given:
 - i. if delivered to or left at the address of the party, on that day;

- ii. if posted, on the third day after posting; and
 - iii. if sent by facsimile or email, on that day if it is sent before 12 noon or otherwise on the next business day after it is sent, unless the sending party is aware that transmission is impaired or the fax or email was not sent successfully in which case notice was not given.
- c) by or to the Licensor may be given by or addressed to Council, with or without reference to the Licensor or to Council being the manager of the Licensor, and a notice, consent or approval by the Licensor may be signed by any authorised officer of the Council.

17.2 Rights Reserved

All rights and duties which Council has as a local authority or which the Council's officers have as local authority officers are expressly reserved.

17.3 Whole Agreement

The provisions contained in this Licence cover and comprise the whole agreement between the parties.

17.4 No waiver

No waiver by the Licensor of any breach by the Licensee of any Obligation, either express or implied, operates as a waiver of another breach of the same or any other Obligation. The provisions of this Licence must not be taken either at law or in equity to have been varied, waived, discharged or released by the Licensor unless by express consent in writing.

17.5 No Variation Except by Deed

- a) No variation of this Licence is effective or valid unless in writing executed by the parties and consented to by the Minister in writing.
- b) Without limiting clause a), the Licensee acknowledges and agrees that no oral or written statement by a Council officer is sufficient to constitute a variation of this Licence and is not effective or binding on the Licensor or Council unless in writing and executed in accordance with clause a).

17.6 Licensor and Licensee Only

The relationship between the Licensor and the Licensee is one of licensor and licensee. Nothing contained or implied in this Licence is permitted to be deemed or construed to create the relationship of lessor and lessee, or of partners, or of principal and agent or of joint venture between the Licensor and the Licensee or between Council and the Licensee.

18. OPTION TO RENEW

18.1 Option

If the Licensee desires a further licence of the Premises for a term of 5 years starting on the day after the Terminating Date, and if the Licensee gives written notice of that desire to the Licenser not more than 12 months and not less than 6 months prior to the Terminating Date, then **provided** that the Licensee is not in breach of this Licence as at the date it gives the notice to the Licenser nor as at the Terminating Date, the Licenser must grant a further licence to the Licensee on the terms set out in clause 18.2.

18.2 Further licence

The further licence will be on the same terms and conditions as this licence except for the following changes:

- a) The Commencing Date of the further licence must be the day immediately after the Terminating Date of this licence.
- b) The Terminating Date of the further licence must be the day which is 5 years after the Commencing Date.
- c) The Licence Fee at the start of the further licence must be the Licence payable as at the Terminating Date of this licence multiplied by the Current CPI and divided by the Previous CPI as if the Commencing Date under the further licence were a CPI Adjustment Date under this licence.
- d) Provided the Licensee has complied with clause 9.2, Clause 9.2 is amended by:
 - I. deleting "as at the date of its incorporation on 8 November 2000"
 - II. deleting clause 9.2(a) and
 - III. deleting the word "otherwise" from clause 9.2(b).
- e) Necessary and consequential changes must be made to reflect that the further licence arises from the exercise of an option to renew granted by this lease.
- f) This clause 18 and Item 13 must be omitted from the further licence.

REFERENCE SCHEDULE

ITEM 1 LICENSOR

Balmain (R91327) Reserve Trust

ITEM 2 LICENSEE

Little Nicholson Street Play Centre Inc

ITEM 3 PREMISES

Part of Balmain (R91327) Reserve being Lot 1 DP76424 known as 13 Union Street, Balmain NSW 2041, being that part within the existing fence on the Reserve.

ITEM 4 COMMENCING DATE

1 November 2012

ITEM 5 TERMINATING DATE

31 October 2017

ITEM 6 LICENCE FEE

~~\$442~~
\$367 plus GST per annum

ITEM 7 CPI ADJUSTMENT DATES

Each anniversary of the Commencing Date.

ITEM 8 PERMITTED USE

Play Centre for 0-5 year old children and associated uses permitted by and in accordance with the Development Consent.

ITEM 9 PERMITTED HOURS

Monday	8.45am – 5.15pm
Tuesday	8.45am – 5.15pm
Wednesday	8.45am – 5.15pm
Thursday	8.45am – 5.15pm
Friday	8.45am – 5.15pm
Saturday	9.00am – 5.00pm
Sunday & Public Holidays	Closed

During eastern Summer time the centre may operate until 7.00pm on one weeknight & on one Saturday in December for a Christmas party.

NM

ITEM 10 REDECORATION REQUIREMENTS AND DATES

Repaint every 5 years and when reasonably required by notice from the Licensor.

ITEM 11 PUBLIC LIABILITY INSURANCE

\$20,000,000.00

ITEM 12 ADDRESSES FOR SERVICE

Licensor: (If delivered or posted): 7-15 Wetherill Street,
Leichhardt NSW 2040

(If posted): PO Box 45, Leichhardt NSW 2040

(If faxed): (02) 9367 9111

(If emailed): leichhardt@lmc.nsw.gov.au

Licensee: (If delivered or posted): The Premises

(If posted)

(If faxed): (02)

(if emailed):

ITEM 13 OPTION TO RENEW

5 years (Clause 20)

EXECUTED AS A DEED

Executed for and on behalf of
Leichhardt Municipal Council
by its General Manager pursuant
to Council resolution C518/12 of
23 October 2012 in the presence of:


.....
Signature of Witness

ANNALENE LOURENCO
.....
Name of Witness

7-15 Wetherill Street, Leichhardt
Address of Witness


.....
Signature of General Manager

Executed by **Little Nicholson Street
Play Centre Inc** in accordance with s.22
Associations Incorporation Act 2009 by:


.....
Signature of Authorised Person

KYLIE EVANS
.....
Name of Signatory (block letters)
52 Elliott Street
Balmain NSW 2041
.....
Address of Signatory


.....
Signature of Authorised Person

NATASHA MORRIS
.....
Name of Signatory (block letters)
19 WEST
BIRCHGROVE NSW 2041
.....
Address of Signatory

Ministerial Consent

Under authority of section 102 of the Crown Lands Act 1989.
Dated

.....
Name of Signatory (block letters)

.....
Signature

.....
Position of Signatory



Date Printed: 23/10/21

1:531.130 @ A4

Little Nicholson Street Play Centre Inc. Licensed Area

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