

Deed of Variation

The Council of the City of Sydney (ABN 22 636 550 790) and

Belgravia Health and Leisure Group Pty Ltd as Trustee for
Belgravia Leisure Unit Trust

For the Management of:

Andrew (Boy) Charlton Pool

Prince Alfred Park Pool

Victoria Park Pool

Cook and Phillip Park Aquatic and Fitness Centre

Ian Thorpe Aquatic Centre

Reference: 2023/260661-06

THIS DEED is made on **4 July**

2024

PARTIES

- (1) THE COUNCIL OF THE CITY OF SYDNEY** ABN 22 636 550 790 of Town Hall House, 456 Kent Street Sydney NSW 2000 (**City**);
- (2) BELGRAVIA HEALTH AND LEISURE GROUP PTY LTD** ACN 005 087 463 **AS TRUSTEE FOR THE BELGRAVIA UNIT TRUST** ABN 18 118 940 063 of 20 Longstaff Road, Bayswater, VIC 3153 (**Service Provider**)

BACKGROUND

- A. The City and the Service Provider are parties to the Contract.
- B. The City and the Service Provider have agreed to vary the Contract to further extend the term of the Contract (Second Extension Period) and modify the terms of the Contract for the Second Extension Period in the manner set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

Contract means the agreement between the City and the Service Provider entered into on 1 February 2012 as amended by the Deed of Amendment to the Contract entered into on or around 1 April 2016, the Second Deed of Amendment dated 1 March 2022 and Letter of Agreement dated 12 May 2023.

Deed means this deed of variation of the Management Agreement and all annexures, schedules, attachments and exhibits.

GST means the same as in the GST Law.

GST Law means the same as "GST law" in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.2 Rules for interpreting this Deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

(i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

(ii) a document (including this document) or contract, or a provision of a document (including this document) or contract, is to that document, contract or provision as amended, supplemented, replaced or novated;

- (iii) a party to this document or to any other document or contract includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The words subsidiary, holding company and related body corporate have the same meanings as in the *Corporations Act 2001* (Cth).
 - (g) A reference to dollars or \$ is to an amount in Australian currency.
 - (h) A reference to this document includes the agreement recorded by this document.
 - (i) Words defined in the GST Law have the same meaning in clauses about GST.
 - (j) A reference to a month is to a calendar month.
- 1.3 A reference to a term defined in the Agreement has the same meaning when used in this Deed.
- 1.4 This Deed is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2 VARIATION OF AGREEMENT

The Agreement is amended as follows:

2.1 In Item 3 of the Reference Schedule – Term the wording “Nine years and two months from the Commencing Date” is deleted and replaced with the words “Ten years and five months from the Commencing Date.”

2.2 A new clause 44 is added as follows:

44 Modified terms of the Contract in relation to the Second Extension Period

44.1 Financial Offer

The parties acknowledge and agree that:

- (a) the Service Provider’s financial offer for the Second Extension Period is [REDACTED] as summarised below and set out in the worksheet attached to this Deed as Annexure A.

FY 2024	FY 2025	Total
April 2024- June 2024	July 2024- June 2025	April 2024- June 2025
[REDACTED]	[REDACTED]	[REDACTED]

- (b) The financial offer for the Second Extension Period excludes any aquatic maintenance.

44.2 Contract Expenses Methodology

The parties acknowledge and agree that:

- (a) instead of the calculation of Contract Expenses being based on budget, the percentage of the Contract Expenses will be based on actual Income and calculated at [REDACTED]
- (b) The Service Provider will base the calculation of the Adjustment Amount of the Contract Expenses on the quarterly profit and loss statements and submit the quarterly Reconciliation Certificate to the City for approval.
- (c) Once the City has verified the Reconciliation Certificate the Service Provider will invoice the City for the agreed Adjustment Amount and the City will then pay the Adjustment Amount to the Service Provider.
- (d) If there is any difference between the annual audited financial statements and the quarterly Adjustment Amounts, the Service Provider will provide a “true up adjustment” to the City for its approval.
- (e) The “true up adjustment” will be completed annually and submitted to the City with the Service Provider’s audited financial statements by 31 August in each year of the Second Extension Period.

44.3 User Benefits – Service Enhancement

During the Second Extension Period the Service Provider will deliver the following service improvements:

- (a) Continued commitment towards implementation of an Innovate Reconciliation Plan.
- (b) City Access Card – to be administered by the Service Provider in 2024.
- (c) Active Health Day – to be implemented in the summer of 2024. The Service Provider will expand the focus of the annual open day event to provide opportunities for patrons and community engagement with access to allied health service initiatives such as

Cancer Council skin checks, oral care, physiotherapist fitness and body metric tests, and influenza shots.

3 NO OTHER CHANGE

The parties confirm that the Contract will continue in full force and effect as varied by this Deed. Nothing in this Deed will be read or construed as implying any form of variation or waiver other than as expressly set out in the Contract.

4 FURTHER ASSURANCE

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

5 LEGAL COSTS

- a. Each party will bear its own legal costs in relation to the preparation and execution of this Deed.

6 GENERAL

- a. This Deed contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Deed are of no effect.
- b. A right may only be waived in writing, signed by the party giving the waiver, and:
 1. no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
 2. a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
 3. the exercise of a right does not prevent any further exercise of that right or of any other right.
- c. Nothing in this Deed in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.
- d. The invalidity, illegality or unenforceability of any provisions of this Deed will not affect the validity or enforceability of any other provisions.
- e. This Deed may only be varied in writing by the agreement of the parties.
- f. This Deed is governed by and construed in accordance with the law of the State of New South Wales.
- g. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed.

- h. The parties acknowledge and agree that this Deed may be signed electronically and in counterparts, in accordance with the *Electronic Transactions Act 2000* (NSW)

EXECUTION

Executed as a deed on


Signed for and on behalf of THE COUNCIL OF THE CITY OF SYDNEY
by its duly authorised officer in the presence of:



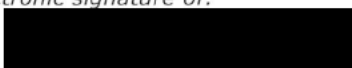
Witness:



Signature:

Electronic signature of:


Name (printed):

Electronic signature of:


Name of Authorised Officer:

Affixed by me on:
4/07/2024

Date signed

Affixed by me on:
4/07/2024

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000 (NSW)*


Signed by BELGRAVIA HEALTH AND LEISURE GROUP PTY LTD AS TRUSTEE FOR THE BELGRAVIA LEISURE UNIT TRUST in accordance with section 127 of the Corporations Act:




Signature of Director



Signature of Director/Secretary:

Electronic signature of:


Full Name (printed):

Electronic signature of:


Full Name (printed):

Affixed by me on:
24-06-24

Date signed

Affixed by me on:
24/6/24

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000 (NSW)*

ANNEXURE A FINANCIAL OFFER