

DATED _____ 2019

LICENCE TO OCCUPY

PLAYING FIELDS AT WALBERSWICK, SUFFOLK

between

WALBERSWICK PARISH COUNCIL

and

WALBERSWICK COMMON LANDS CHARITY



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Ref: JL

THIS LICENCE is dated _____ 2019

PARTIES

- (1) **THE TRUSTEES OF WALBERSWICK COMMON LANDS CHARITY** care of The Clerk, PO Box 73, Halesworth, IP19 1AU (**Licensor**); and
- (2) **WALBERSWICK PARISH COUNCIL** care of Clerk to Walberswick PC, Rose Farm Cottage, Mutton Lane, Brandeston, Suffolk, IP13 7AR (**Licensee**)

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this licence.

1.1 Definitions:

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

Fencing: the fencing currently situated at the Property

Licence Fee: a peppercorn, if demanded.

Licence Period: the period from and including the date of this Licence until the date on which this licence is determined in accordance with clause 4.

Licensee's Items: the Pavilion and the Play Equipment which the Licensor acknowledges are assets of the Licensee.

Necessary Consents: all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

Pavilion: the former "Burgess Pavilion" located at the Property and constructed of timber and asbestos sheeting located in the south-eastern corner of the Property.

Permitted Use: use for the purposes of sporting and recreational facilities and in part as a children's play area.

Plan: the plan attached to this licence.

Play Equipment: the children's play area equipment and other sports-related equipment that is currently situated at the Property

Property: the land and any buildings thereon at The Common, Walberswick shown edged red on the Plan.

Service Media: all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.2 Clause headings shall not affect the interpretation of this licence.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.7 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.8 A reference to **writing** or **written** excludes fax and e-mail.
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.10 References to clauses are to the clauses of this licence.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

2. Licence to occupy

2.1 Subject to clause 3 and clause 4, the Licensor permits the Licensee to occupy the Property for the Permitted Use for the Licence Period in common with the Licensor and all others authorised by the Licensor (so far as is not inconsistent with the rights given to the Licensee to use the Property for the Permitted Use).

2.2 The Licensee acknowledges that:

- (a) the Licensee shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Licensor and the Licensee by this licence;
- (b) the Licensor retains control, possession and overall management of the Property (without prejudicing the Licensee's management and other obligations in this Licence) and the Licensee has no right to exclude the Licensor from the Property (including the Pavilion); and
- (c) the licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights given in this clause may only be exercised by the Licensee and its agents and lawful visitors.

3. Licensee's obligations

The Licensee agrees and undertakes:

- (a) to pay:
 - (i) to the Licensor the Licence Fee on demand; and
 - (ii) to the relevant suppliers all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Property (if any);
- (b) to keep the Property clean, tidy and clear of rubbish;
- (c) to provide to the Licensor copies of any keys used by the Licensee in relation to the Property (including for the avoidance of doubt the Pavilion);
- (d) not to use the Property other than for the Permitted Use;
- (e) not to make any alteration or addition whatsoever to the Property (including but not limited to the Licensee's Items) without the Licensor's consent (not to be unreasonably withheld);
- (f) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Property without the prior written consent of the Licensor (such consent not to be unreasonably withheld or delayed);

- (g) not to do or permit to be done on the Property anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Licensor or any owner or occupier of neighbouring property;
- (h) not to cause or permit to be caused any damage to:
 - (i) the Property or any neighbouring property; or
 - (ii) any property of the owners or occupiers of the Property or any neighbouring property;
- (i) not to apply for any planning permission in respect of the Property without the Licensor's consent (not to be unreasonably withheld);
- (j) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Property or which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Property from time to time or the insurance effected by the Licensee in accordance with paragraph (o);
- (k) to comply with all laws and with any recommendations of the relevant suppliers relating to the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Property (if applicable);
- (l) to regularly inspect and maintain all equipment and buildings present at the Property and to generally keep the Property in a safe condition according to the likely users of the Property and to ensure it is fully compliant with all health and safety legislation;
- (m) to keep and maintain the Fencing (including any gates) at the Property in order to keep the Property secure and vermin-proof (including rabbits) which shall include a gorse-free boundary within the Property and adjacent to the Fencing so that gorse does not grow through and damage the Fencing SAVE THAT any breach of this clause during the Licence Period shall not entitle the Licensor to take any proceedings against the Licensee (including ending this agreement in accordance with clause 4.1(b)) on the proviso that, at the end of the Licence Period (howsoever it is determined), the Fencing is so repaired and any damage made good to the Licensor's satisfaction in accordance with this clause.
- (n) to regularly mow all parts of the Property as are usually mown;
- (o) to effect and maintain a policy of insurance (approved by the Licensor) with the Licensor's interest noted, in such sum and in respect of such liabilities as the Licensor deems necessary (acting reasonably) including but not limited to public liability arising from the Permitted Use, including in particular liability arising from use of the Play Equipment, and to provide a copy of the latest policy

schedule and proof of payment to the Licensor upon demand (but not more than twice in any twelve-month period);

- (p) to observe any rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Property;
- (q) to leave the Property in a clean and tidy condition and to remove (a) the Licensee's furniture equipment and goods (including the Licensee's Items) at the end of the Licence Period (unless otherwise instructed by the Licensor) and to make safe the Property at the end of the Licence Period and to make good (to the Licensor's satisfaction) any damage caused in so doing;
- (r) to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
 - (i) this licence;
 - (ii) any breach of the Licensee's undertakings contained in clause 3;
 - (iii) the exercise of any rights given in clause 2; and/or
 - (iv) any other liability incurred by the Licensor by virtue of its being the legal owner of the Property (save for acts or omissions of the Licensor itself).
- (s) to pay to the Licensor interest on any payments due under this Licence at the rate of 4% per cent per annum above the base rate of the Bank of England from time to time calculated on a daily basis from five working days of the due date (whether formally demanded or not).

4. Termination

4.1 This licence shall end on the earliest of:

- (a) the date ten years from the date of this licence;
- (b) the expiry of any notice given by the Licensor to the Licensee at any time on breach of any of the Licensee's obligations contained in clause 3; or
- (c) the expiration of 12 months' written notice given by either party to the other.

4.2 Termination of this licence shall not affect the rights of either party in connection with any breach of any obligation under this licence which existed at or before the date of termination.

5. Notices

5.1 Any notice given under this licence shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:

- (a) to the Licensor at the address shown on the first page of this Licence and marked for the attention of The Clerk; and
- (b) to the Licensee at: the address shown on the first page of this Licence and marked for the attention of The Clerk,
or as otherwise specified by the relevant party by notice in writing to each other party.
- 5.2 Any notice given in accordance with clause 5.1 will be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the working day after posting.
- 5.3 A notice given under this licence shall not be validly given if sent by e-mail.
- 5.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 6. No warranties for use or condition**
- 6.1 The Licensor gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.
- 6.2 The Licensor gives no warranty that the Property is physically fit for the purposes specified in clause 2.
- 6.3 The Licensee acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Licensor before the date of this licence as to any of the matters mentioned in clause 6.1 or clause 6.2
- 6.4 Nothing in this clause shall limit or exclude any liability for fraud.
- 7. Limitation of Licensor's liability**
- 7.1 Subject to clause 7.2, the Licensor is not liable for:
- (a) the death of, or injury to the Licensee, its employees, customers or invitees to the Property; or
- (b) damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Property; or

- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by clause 2.

7.2 Nothing in clause 7.1 shall limit or exclude the Licensor's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Licensor or its employees or agents; or
- (b) any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

8. Third party rights

A person who is not a party to this licence shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this licence.

9. Governing law

This licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

10. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this licence or its subject matter or formation (including non-contractual disputes or claims).

This licence has been entered into on the date stated at the beginning of it.

Signed by _____,
an officer, for and on behalf of
WALBERSICK PARISH COUNCIL

Officer signature

Position (PRINT)

Signed by _____,
a trustee, for and on behalf of
WALBERSICK COMMON LANDS CHARITY

Trustee signature

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