

**LICENCE TO OCCUPY
PARTICULARS**

Date of Agreement: _____ 2023

Council: The Cornwall Council of County Hall, Treyew Road,
Truro TR1 3AY

Licensee: Saltash Town Council
Cornwall PL11 3LE

Commencement Date: 1st April 2023

Council's Property: The freehold property known as Memorial Peace
Garden, part of POS at Alexander Gardens 18766

End Date: 31st March 2024

Licence Fee: £1 per annum.

Payment Date: the first day of the month
the date of this agreement
OR on receipt of an invoice

Permitted Use: Public gardens

Signed by:

Council

Licensee

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1. INTERPRETATION

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

1.1 Definitions:

Common Parts: such roads and paths and other means of access in or upon the Council's Property the use of which is necessary for obtaining access to and egress from the Property as designated by the Council from time to time.

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.

Licence Period: the period of one year starting on 1st April 2023 and then from year to year until this licence is determined in accordance with clause 7

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.

Plan: the plan attached to this licence at Appendix A.

Property: the part of the Council's Property edged red on the Plan.

Third Party Insurance: fully comprehensive public liability insurance in a sum not less than £10,000,000 for each and every claim arising in respect of the Permitted Use.

1.2 Clause headings do 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 The annexes form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the annexes.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

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- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this licence.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this licence under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** does not include fax or email.
- 1.10 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.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. LICENCE

- 2.1 Subject to Clause 3 and clause 4, the Council permits the Licensee to occupy the Property for the Permitted Use for the Licence Period in common with the Council and all others authorised by the Council (so far as is not inconsistent with the rights given to the Licensee to use the Property for the Permitted Use) together with the right to use such parts of the Common Parts for the purpose of access to and egress from the Property as shall from time to time be designated by the Licensor for such purpose.
- 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 Council and the Licensee by this licence;
 - (b) the Council retains control, possession and management of the Property and the Licensee has no right to exclude the Council from the Property;
 - (c) the licence to occupy granted by this agreement is personal to the Licensee and is not assignable and may only be exercised by the Licensee and its employees or Licensees; and
 - (d) without prejudice to its rights under Clause 4, the Council shall be entitled at any time on giving not less than 2 weeks' notice to require the Licensee to transfer to comparable space elsewhere within the Council's Property and the Licensee shall comply with such requirement.

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3. LICENSEE'S OBLIGATIONS

The Licensee agrees and undertakes:

- 3.1 to pay:
 - (a) to the Council the Licence Fee payable without any deduction in advance on the Payment Dates the first such payment being for the period from and including the Commencement Date to the day before but not including the next Payment Date to be made on the date of this licence together with such VAT as may be payable on the Licence Fee; and
 - (b) to the relevant suppliers all costs in connection with the supply of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Property;
- 3.2 not to connect into or use the Council's supply of electricity, gas, water, sewage, telecommunications, data and other services and utilities to or from the Council's Property;
- 3.3 that all sums due and any other consideration to be given to the Council under this licence are exclusive of VAT, which the Licensee shall pay when the sum or consideration is due;
- 3.4 if the Licensee is obliged to reimburse expenditure incurred by the Council, that obligation includes payment of VAT irrecoverable by the Council;
- 3.5 to pay all existing and future rates, duties, taxes and other outgoings in respect of the Property;
- 3.6 to keep the Property clean, tidy and clear of rubbish;
- 3.7 not to use the Property other than for the Permitted Use and to perform and observe the obligations set out in clause 4;
- 3.8 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 Council such consent not to be unreasonably withheld or delayed;
- 3.9 not to cause or permit to be caused any damage to:
 - (a) the Property, the Council's Property or any neighbouring property; or
 - (b) any property of the owners, occupiers or guests of the Property, the Council's Property or any neighbouring property;

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- 3.10 not to obstruct the Common Parts, the Council's Property or any neighbouring property, make them dirty or untidy or leave any rubbish, materials or debris on them;
- 3.11 not to apply for any planning permission in respect of the Property;
- 3.12 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 Council in respect of the Property and Council's Property from time to time;
- 3.13 not to make any alterations or additions to the Property;
- 3.14 to comply with all laws and with any recommendations of the relevant suppliers relating to the supply of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Property;
- 3.15 to observe any rules and regulations the Council makes and notifies to the Licensee from time to time governing the Licensee's use of the Property and the Common Parts;
- 3.16 to leave the Property in a clean and tidy condition and to remove the Licensee's fixtures, fittings, equipment materials, chattels and other items from the Property at the end of the Licence Period;
- 3.17 that, without prejudice to any other right or remedy of the Council, if the Licensee leaves any of its fixtures, fittings, equipment, materials, chattels or any other items (including without limitation any signage) (**Licensee Items**) at the Property or Council's Property for more than 10 working days after end of the Licence Period the ownership of such Licensee Items shall irrevocably pass to the Council and the Council shall be permitted to deal with such Licensee Items as it wishes (including without limitation selling or disposing of such Licensee Items) and the Licensee shall indemnify the Council against any claims made by a third party in relation to such dealings by the Council with such Licensee Items;
- 3.18 that the proceeds of sale of any Licensee Items sold by the Council pursuant to clause 3.17 shall belong absolutely to the Council.
- 3.19 before the termination of the Licence Period, to reinstate the Property to its condition prior to the date of this licence and make good all consequential damage, to the Council's satisfaction;

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- 3.20 to pay the reasonable and proper costs and expenses of the Council including any solicitors' or other professionals' costs and expenses incurred (both during and after the end of the Licence Period) in connection with any consent or approval applied for under this licence, whether or not it is granted.

4. CONDITIONS OF USE

- 4.1 The Licensee shall carry out all necessary risk assessments before occupying the Property and provide a copy to the Council upon reasonable request.
- 4.2 The Licensee shall not bring on to the Common Parts or keep on the Property any article or thing which is or may become combustible, dangerous, explosive, flammable, offensive or radio-active, or which might increase the risk of fire or explosion other than reasonable items required for the Permitted Use or reasonable operation of any machinery, equipment and apparatus in connection with the Permitted Use which shall be stored in accordance with the requirements of any statute, any insurer of the Property and/or the Council's Property and of the Council.
- 4.3 The Licensee shall not deposit in the Common Parts or on any land forming part of the Property any refuse or rubbish of any kind other than in proper receptacles on the Property, and shall not burn any refuse or rubbish on the Property.
- 4.4 The Licensee shall not do anything as a result of which the Common Parts or other area over which the Licensee may have rights of access or use may be damaged, or their fair use by others may be obstructed in any way.
- 4.5 The Licensee shall not load or unload any goods, materials or other items arriving at or dispatched from the Property except on land forming part of the Property and in such a way that access to or egress from other parts of the Council's Property or any neighbouring property is not obstructed.
- 4.6 The Licensee shall not permit any vehicles belonging to the Licensee or any persons calling on the Property expressly or by implication with the authority of the Licensee to enter and leave the Property or the Common Parts except at the vehicular access points constructed for that purpose.
- 4.7 The Licensee shall not use or allow any part of the Property or the Common Parts to be used in such a way as to adversely affect the Council's use and enjoyment of the Council's Property including but not limited to prohibiting any deliveries to the Property between 6pm and 8am.

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- 4.8 The Licensee shall not do anything in the Property or on the Common Parts which is illegal or which may be or become a nuisance, or which may cause damage, annoyance, damage, disturbance or inconvenience to, or unreasonably interfere with, the Council or any other tenant, occupier or guest of the Council's Property or any owner or occupier of any neighbouring property, or which may be injurious to the amenity, character, tone or value of the Council's Property or which would interfere with the use of the Council's Property or any neighbouring property.
- 4.9 The Licensee shall keep any part of the Property not covered by buildings in a neat and tidy condition and so as not to cause any injury to the amenity of the Council's Property.

5. LICENSEE'S INDEMNITY

- 5.1 The Licensee shall at all times indemnify the Council against any of the following events arising out of or connected with the occupation of the Property or any breach of or non-compliance with any of the terms of this licence:
- (a) any damage, injury or death sustained by the Council or any other person;
 - (b) any loss of or damage to the Council's Property or to any property of the Council (including any buildings, fixtures or other permanent or temporary structures or to any goods, chattels or equipment) on the Council's Property; and
 - (c) all actions, proceedings, claims, demands, losses, costs, damages, expenses and liability brought against or suffered or incurred by the Council.

6. INSURANCE

- 6.1 During the Licence Period the Licensee shall maintain the Third Party Insurance and the Licensee shall ensure that:
- (a) a copy of this licence has been produced to and acknowledged by the insurer;
 - (b) all current premiums are paid and up to date;
 - (c) the Licensee complies in all respects with the terms of the Third Party Insurance and does not allow that insurance to lapse; and
 - (d) satisfactory evidence is produced to the Council (when reasonably requested) that the Third Party Insurance is valid and subsisting and that all premiums due have been properly paid.

7. TERMINATION

- 7.1 This Licence shall end on the earliest of: :
- (a) Immediately on the service of 5 days written notice given by either party to the other

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- (b) The Council giving notice to the Licensee to terminate this Licence with immediate effect if the Licensee commits any breach of the obligations under this licence which is not capable of remedy; or
- (c) the Licensee commits any breach of this licence which is capable of remedy and the Licensee fails to remedy the breach within such period as is stipulated by the Council in a notice from the Council to the Licensee requiring the Licensee to remedy the same.

7.2 Service of a notice shall terminate the Licensee's rights under this licence with immediate effect but shall be without prejudice to:

- (a) any antecedent breach of this licence by the Licensee and any right or remedy of the Council arising from such a breach;
- (b) the ongoing obligations of the Licensee in relation to the dismantling and removal of the any items belonging to the Licensee; and
- (c) the ongoing obligations of the Licensee to maintain Third Party Insurance in accordance with clause 6.

8. COUNCIL'S LIABILITY

8.1 The grant of this licence by the Council is without any liability on the part of the Council in relation to or arising from the Permitted Use and any such grant or approval shall not limit exclude or modify the duties and liabilities of the Licensee under this licence or under the requirements of any Competent Authority or otherwise.

8.2 The Council enters into this licence solely in its capacity as landowner of the Council's Property and not in any other capacity. Nothing in this tenancy shall restrict its powers or rights as a local authority, local planning authority or statutory body to perform any of its statutory functions.

8.3 The Council gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.

8.4 The Council gives no warranty that the Property is physically fit or suitable for the Permitted Use or that it may be lawfully carried out.

9. INTEREST

If a party fails to make any payment due to any other party under this licence by the due date for payment, then, without limiting any remedies under clause 7, the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

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10. MISCELLANEOUS PROVISIONS

- 10.1 For the avoidance of doubt, the parties to this licence acknowledge that at no time during the Licence Period will the Licensee enjoy the right to exclusive possession of the Property and that this licence confers no rights of light or air or any easement whatsoever.
- 10.2 No one other than a party to this licence, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 10.3 Notices are validly served if served in accordance with section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 or sent to the Licensee by post or left at their registered office or last known address in Great Britain.
- 10.4 This licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 10.5 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this licence or its subject matter or formation.

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

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APPENDIX A- Plan

Council Land – shown edged in blue

Property – shown edged in red

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