

DATED

LICENCE TO OCCUPY ON SHORT TERM BASIS

relating to the area known as Beach Hut Number XXXXXXXX on Land at The Leas
Minster on Sea Sheerness Kent, ME12 2NL

between

SWALE BOROUGH COUNCIL

and

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Mid Kent Legal Services
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent ME10 4HT

REF: xxxxxx

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SCHEDULE

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THIS LICENCE is dated

PARTIES

- (1) **SWALE BOROUGH COUNCIL** of Swale House, East Street, Sittingbourne, Kent ME10 3HT (**Licensor**).
- (2) xxxxxxxxxxxxxxxxxxxxxx (**Licensee**).

WHEREAS:

The Licensor is the freehold owner of the Land. In accordance with the terms and conditions hereinafter contained the Licensor has agreed to allow the Licensee to use the Beach Hut on the Property which is located on part of the Land.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Beach Hut: the beach hut known as xxxxxxxx which is owned by the Licensor and is situated on the Property.

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.

Designated Hours: every day between the hours of 05:00 and 23:00 only or such other hours as the Licensor in its absolute discretion may determine on 2 weeks' notice to the Licensee.

Land: the land known as The Leas Minster on Sea Sheerness Kent which is registered at the Land Registry under title number K947473.

Licence Fee: the amount of xxxxxxxxxxxxxxxxxxxxxx per annum payable in advance.

Licence Fee Commencement Date: xxxxxxxxx

Licence Period: the period from and including xxxxxxxxx until the date on which this licence is determined in accordance with clause 6.

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.

Permitted Use: use of the Beach Hut for recreational purposes ancillary to the use of the adjoining beach.

Plan: the plan attached to this licence marked "Plan".

Property: the land shown edged red on the Plan.

Standpipe: the standpipe providing water that is situated on the Land.

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, Schedule and paragraph 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 The Schedule forms 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 Schedule.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 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 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.
- 1.8 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.
- 1.9 A reference to **writing** or **written** excludes fax and e-mail.
- 1.10 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 reasonable endeavours to prevent that thing being done by another person.

- 1.11 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 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.
- 1.13 Unless expressly provided otherwise, the obligations and liabilities of the Licensee under this licence are joint and several.
- 1.14 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 4, clause 6 and clause 5, the Licensor permits the Licensee to use and occupy the Property for the Permitted Use for the Licence Period during the Designated Hours 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) together with the rights mentioned in the Schedule.
- 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 management of the Property and the Licensee has no right to exclude the Licensor from the Property;
 - (c) the licence to occupy granted by this agreement is personal to the Licensee and is not assignable, transferable, able to be sublet or in any way alienable and the rights given in clause 2 may only be exercised by the Licensee;
 - (d) that the Licensee has no legal claim for a rebate of the Licence Fee in the event of the Beach Hut or the Property being damaged or otherwise rendered unusable from any cause whatsoever and the Licensee shall have no right of set off or counter-claim against the Licensor; and
 - (e) the Licensor shall not be responsible for any damage accidental or otherwise that may occur to the contents of the Beach Hut or for any

injury to the Licensee or its visitors or persons on the Property with the consent or knowledge of the Licensor ; and

- (f) the Licensor has the discretion to reasonably increase the Licence Fee annually pursuant to the Licensor's annual fees and charges review process. The Licensor will notify the Licensee of the increase in writing in advance.

3. LICENSOR'S OBLIGATIONS

The Licensor agrees and undertakes:

- (a) to be responsible for insuring the Beach Hut against damage or destruction by fire and other usual risks against which the Licensor chooses to insure; and
- (b) in the event of the Beach Hut being damaged or otherwise rendered unusable from fire or other usual risks, at the Licensor's sole discretion, the Licensor may issue to the Licensee a refund of the Licence fee to the Licensee on a pro rata basis.

4. LICENSEE'S OBLIGATIONS

The Licensee agrees and undertakes:

- (a) to pay:
 - (i) to the Licensor the Licence Fee payable without any deduction or set off in advance on the date of this Licence together with such VAT as may be payable on the Licence Fee; and
 - (ii) to the Licensor business rates when demanded by the Licensor and to pay any other rates taxes duties charges assessments and outgoings whatsoever which are now or which may at any time during the term of this Licence be assessed charged imposed or payable in respect of the Property and the Land.
- (b) to keep the Property and the Land clean, tidy and clear of rubbish;
- (c) to advise the Licensor within one calendar month of any change of address or contact details of the Licensee and pay to the Licensor an administration fee for effecting the change if demanded;
- (d) to keep the Beach Hut locked and secured and to clearly display the number of the Beach Hut on the front of the Beach Hut;
- (e) to be responsible for insuring any contents of the Beach Hut against loss or damage by fire and other insurable risks;

- (f) not to store or allow to be stored anything in the Beach Hut or on the Property or on the Land other than items ancillary to the enjoyment of the beach;
- (g) not to store on the Property or the Land or in the Beach Hut any flammable mixtures including gases;
- (h) not to keep animals on the Property or in the Beach Hut. Dogs are permitted during the day but must be accompanied by the Licensee at all times and the Licensee must comply with the Council's Dog Control Orders;
- (i) not to keep dogs or other animals in the Beach Hut overnight;
- (j) not to use or allow to be used the Beach Hut or the Property for sleeping overnight;
- (k) To pay to the Licensor a deposit of thirty five pounds (£35) for the keys given to it to access the Beach Hut and the Standpipe;
- (l) not to in any way to part with the possession of the keys provided by the Licensor to the Licensee for use by the Licensee only to unlock the padlock to access the water from the Standpipe and to unlock the Beach Hut. Such keys only to be used by the Licensee within the Designated Hours;
- (m) to take full responsibility for the use and holding of the keys referred to in clause 4(k) and 4(l) above and not duplicate the keys or permit to be duplicated whether or not proved to be within the Licensees' knowledge of duplication unless in accordance with clause 4(n) below;
- (n) that should the key to the Beach Hut need to be replaced, the Licensee will provide the Licensor with a copy of the key;
- (o) not to barbecue food in the Beach Hut or on the Property or on the Land;
- (p) not to carry on any trade business or profession in the Beach Hut or on the Property or on the Land;
- (q) not to use the Property other than for the Permitted Use;
- (r) not to make any alteration or addition whatsoever to the Beach Hut or the Property or the Land without the prior written consent of the Licensor unless in accordance with the Licensee's obligations in clause 5.2;
- (s) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Property on the Beach Hut or elsewhere on the Land without the prior written consent of the Licensor;

- (t) 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 to tenants or occupiers of the Land or any owner or occupier of neighbouring property;
- (u) not to cause or permit to be caused any damage to:
 - (i) the Property, the Land or any neighbouring property; or
 - (ii) any property of the owners or occupiers of the Land or any neighbouring property;
- (v) not to obstruct any part of the Land, make it dirty or untidy or leave any rubbish on it;
- (w) not to apply for any planning permission in respect of the Property;
- (x) 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 and Land from time to time;
- (y) to comply with all laws and with any recommendations of the relevant suppliers relating to the supply of water from the Standpipe on the Land;
- (z) 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, the Beach Hut and the Land;
- (aa) on the end of the Licence Period (howsoever determined) to leave the Property and the Beach Hut in a clean and tidy condition; to have complied with all the obligations in clause 5.2, and to remove the Licensee's furniture equipment and goods from the Property and the Beach Hut but for the avoidance of doubt, the physical Beach Hut is to remain affixed to the Property and not removed;
- (bb) 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 4 and 5; and/or
 - (iii) the exercise of any rights given in clause 2;
- (cc) to pay to the Licensor interest on the Licence Fee or other payments at the rate of 4 per cent per annum above the base rate of Lloyds Bank Plc from time to time calculated on a daily basis from the due date until payment if the Licensee shall fail to pay the Licence Fee or

any other payments due under this licence within 28 days of the due date (whether formally demanded or not);

- (dd) to allow the Environment Agency local coast protection authorities or their agents to enter the Beach Hut in order to inspect or carry out any sea defence works; and
- (ee) to allow the Licensor or its duly authorised officers to enter the Beach Hut to examine the condition of the Beach Hut to ensure the Licensee is complying with the provisions of this licence.

5. REPAIR OBLIGATIONS

5.1 The Licensor agrees and undertakes:

- (a) to maintain and repair the Property including cutting the grass on the Property; and
- (b) to maintain and repair the Beach Hut to include maintenance and repair of the roof, the padlocks, the steps, and any other part of the Beach Hut that requires maintenance and repair due to normal wear and tear.

5.2 The Licensee agrees and undertakes:

- (a) to repair any acts of vandalism to the Beach Hut or the Property in a timely manner (including the removal of any graffiti and repair to any damage to the doors/locks/railings of the Beach Hut or Property by vandalism); and
- (b) to apply an appropriate coloured paint or preservative (that has been approved by the Licensor in advance) to the external elevations of the Beach Hut at least once every two years the first application being made within the first month of the date of this Licence.

6. TERMINATION

6.1 This licence shall end on the earliest of:

- (a) the expiry of any notice given by the Licensor to the Licensee at any time of breach of any of the Licensee's obligations contained in clause 4 or 5; or
- (b) the expiry of not less than 4 weeks' notice given by the Licensor to the Licensee; or

- (c) the expiry of not less than 4 weeks' notice given by the Licensee to the Licensor.
- 6.2 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.
- 6.3 Should the Licensee not comply with clause 4(aa) at the date of termination of this licence, the Licensor may remove the Licensee's furniture equipment and goods from the Property and the Beach Hut and dispose of them (provided that the Licensor gives notice to the Licensee in writing of its intention to do so) and undertake any cleaning as required and the Licensee will be liable for any associated costs of cleaning and removal and disposal of the Licensee's furniture, equipment and goods.
- 6.4 No rebate of the Licence Fee will be given to the Licensee in the event of termination of the licence under clause 6.1(a) or 6.1(c).

7. NOTICES

- 7.1 Any notice or other communication 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 or by email to the relevant party as follows:
 - (a) to the Licensor at: the address given for the Licensor on this Licence and marked for the attention of Leisure and Technical Services or its email address beachhuts@swale.gov.uk; and
 - (b) to the Licensee at: the address given for the Licensee on this Licenceor as otherwise specified by the relevant party by notice in writing to each other party.
- 7.2 Any notice or other communication given in accordance with clause 7.1 will be deemed to have been received:
 - (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the proper address; or
 - (b) if sent by pre-paid first-class post or other next working day delivery service or by email, at 9.00 am on the fourth working day after posting or sending.
- 7.3 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.

8. COSTS

Each party shall be responsible for their own costs incurred in the preparation and completion of this Licence.

9. NO WARRANTIES FOR USE OR CONDITION

9.1 The Licensor gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.

9.2 The Licensor gives no warranty that the Property or the Beach Hut is physically fit for the purposes specified in clause 2.

9.3 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 9.1 or clause 9.2.

9.4 Nothing in this clause shall limit or exclude any liability for fraud.

10. LIMITATION OF LICENSOR'S LIABILITY

10.1 Subject to clause 10.2, the Licensor is not liable for:

- (a) the death of, or injury to the Licensee, or invitees to the Property or any person on the Property with or without the consent of the Licensee; or
- (b) damage to any property of the Licensee or that of the Licensee's invitees to the Property or any person on the Property with or without the consent of the Licensee; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Licensee or the Licensee's invitees to the Property or any person on the Property with or without the consent of the Licensee in the exercise or purported exercise of the rights granted by clause 2.

10.2 Nothing in clause 10.1 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.

11. 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.

12. 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.

13. 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.

Schedule Rights granted to Licensee

1. The right for the Licensee to use the Property for the Permitted Use during the Designated Hours.
- 1.1 The right for the Licensee to use the Standpipe on the Land.

DRAFT

SIGNED for and on behalf of
SWALE BOROUGH COUNCIL

.....
Authorised Signatory

SIGNED by the said xxxxxxxxxxxx
in the presence of:

Witness Signature:

.....
Witness Name:

.....
Address:

.....

.....
Occupation:

.....

SIGNED by the said xxxxxxxxxxxxxxxxxxxx
in the presence of:

Witness Signature:

.....
Witness Name:

.....
Address:

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Occupation:

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