



DATED

201

COMMUNITY USE AND MANAGEMENT AGREEMENT

relating to

PART OF NORTH HERTFORDSHIRE MUSEUM AND HITCHIN TOWN HALL

between

NORTH HERTFORDSHIRE DISTRICT COUNCIL

and

HITCHIN TOWN HALL LIMITED

THIS COMMUNITY USE AND MANAGEMENT AGREEMENT is dated 201

PARTIES

- (1) NORTH HERTFORDSHIRE DISTRICT COUNCIL of Council offices, Gernon Road, Letchworth, Hertfordshire, SG6 3JF (**Landlord**).
- (2) HITCHIN TOWN HALL LIMITED, a charity incorporated and registered in England and Wales with company number (07974116) and charity number 1148921 whose registered office is at 2 Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire, SG5 1JQ (**Tenant**).

RECITALS

- (A) This Community Use and Management Agreement is ancillary to the Lease.
- (B) The purpose of this Agreement is to set out each Party's rights and obligations in relation to the matters referred to in Schedule 1 of the Lease whilst allowing the Tenant freedom to market and manage the Tenant's Property with a view to maintaining a high standard community facility.
- (C) The Landlord and the Tenant hereby agree that the intention of the Parties is to allow flexibility over the matters addressed by this Agreement and it should therefore be reviewed and amended as necessary during the Contractual Term as hereinafter provided.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation set out in this clause apply to this Agreement.

Default Interest Rate: four percent above the base lending rate from time to time of the Bank of England

Cleaning Standards:

- (i) using the product recommended for the item being cleaned and in accordance with any recommended cleaning regime relevant to the item being cleaned; and
- (ii) in accordance with any recommended cleaning regime relevant to the cleaning product being used; and

- (iii) to the relevant standard recommended by the British Institute of Cleaning Science.

Lease: a lease of the Tenant's Property made on the date hereof between the Landlord (1) and the Tenant (2)

Museum Opening Hours: the hours that the Museum is open to members of the public as determined by the Landlord from time to time.

Party: the Landlord or the Tenant and where the context allows Parties shall mean both of them

Tenant's Property: the part of the floors of the Building shown shaded blue on each of the Floor Plans as are more particularly demised to the Tenant by the Lease.

- 1.2 In this Agreement words and expressions which are otherwise not defined have the same meaning that they have in the Lease.
- 1.3 In relation to any payment, a reference to a fair proportion is to a fair proportion of the total amount payable to be agreed between the Landlord and the Tenant or referred for determination in accordance with the Arbitration Act 1996 by an arbitrator to be appointed by agreement between the Landlord and Tenant or in default of agreement by the president for the time being of the Royal Institution of Chartered Surveyors.
- 1.4 Unless the context otherwise requires, references to the **Building**, the **Common Parts**, the **Museum**, the **Terrace**, the **Central Gallery** and the **Tenant's Property** are to the whole and any part of them or it.
- 1.5 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.6 Any obligation in this Agreement on the Tenant not to do something includes an obligation not to agree to or suffer that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

2. GENERAL PRINCIPLES

- 2.1 In the use of the Building the Landlord and the Tenant shall be mindful of the Equalities Act 2010 (and any replacement anti discrimination legislation) and shall not unlawfully discriminate against any person either directly or indirectly on the grounds of any protected characteristic.

3. HALL AREA

- 3.1 The Tenant shall take reasonable steps to ensure that all users of the Tenant's Property respect the residents and businesses in the local amenity and depart from the Tenant's Property quietly and causing the minimum noise and disturbance to premises near to the Building.
- 3.2 The Tenant shall remove from the Building any person using the Tenant's Property (or any other part of the Building by virtue of rights granted to the Tenant under the Lease) that causes a nuisance by reason of indecent language, or violent, indecent, inappropriate or drunken behaviour.
- 3.3 The Tenant shall regularly assess the maximum capacity of the Tenant's Property taking into account all relevant health and safety and fire regulations and shall control admittance to ensure that the number of users of the Tenant's Property does not exceed the maximum capacity.
- 3.4 Where the Tenant makes arrangements to hire the Hall to a third party the Tenant shall ensure that the terms and conditions of hire comply in all respects with the Lease and this Agreement and comply in all respects with any relevant legislative requirements.

4. CAFÉ AREA

- 4.1 For 90% of the Museum Opening Hours calculated across the trading year the Tenant shall keep the Café staffed, open for business and properly cared for, and must trade actively so as to comply with the obligations on the Tenant under clause 4.3 of this Agreement.
- 4.2 For the remaining 10% of the Museum Opening Hours calculated across the trading year the Tenant must ensure that the Café Area is serviced by well stocked high end food and beverage vending machines so as to comply with the obligations on the Tenant under clause 4.3 of this Agreement.
- 4.3 The Tenant shall use reasonable endeavours to ensure that the Café offers a diverse range of food and beverages that could reasonably be expected to meet the needs of the visitors to the Building bearing in mind the nature and use of the Building and the likely customer base.
- 4.4 During Museum Opening Hours the Tenant shall not restrict access or admittance to the Café or permit the Café to be used in any way that would have the effect of restricting the way in which visitors to the Museum access or use the Café.

- 4.5 The Tenant shall ensure that at all times the café seating remains within the boundary of the Tenant's Property and the Additional Seating Space save that the Landlord may at any time in its absolute discretion and upon the application of the Tenant consent to additional café seating in the Common Parts provided that such consent shall only be valid if given in writing and signed on behalf of the Landlord.
- 4.6 Without prejudice to the Tenant's obligation under the Lease to keep the Tenant's Property clean and tidy, where the Café is used to provide catering facilities to users of the Hall outside of the Museum Opening Hours the Tenant shall ensure that prior to the next opening of the Museum:
- (a) all litter is removed from the Café;
 - (b) the Café is cleaned and tidied in accordance with the Cleaning Standards; and
 - (c) the table and chairs within the Café are laid out in the usual arrangement.

5. CENTRAL GALLERY, BALCONY, TERRACE AND CIRCULATION ROUTE

- 5.1 Subject to the terms of this clause 5 the Landlord shall keep the Central Gallery and Terrace clean and tidy and the Tenant shall keep the Balcony clean and tidy.
- 5.2 The Tenant shall be entitled to use the Central Gallery outside of Museum Opening Hours for any use consistent with the Permitted Use of the Hall provided that such use does not include any activities that unduly conflict with the use of the Central Gallery as a museum display area.
- 5.3 Where the Central Gallery is used by the Tenant outside of Museum Opening Hours the Tenant shall at its own cost ensure that prior to the next opening of the Museum:
- (a) all litter is removed from the Central Gallery; and
 - (b) the Central Gallery is cleaned and tidied in accordance with the Cleaning Standards; and
 - (c) any furniture within the Central Gallery is laid out in the usual arrangement as established from time to time.
- 5.4 Subject to the terms of this clause 5, the Landlord may at any time close the Central Gallery so as to prevent the Tenant and its visitors from accessing the area and the Tenant may at any time close the Balcony and the Circulation Route so as to prevent the Landlord and its visitors from accessing the area.

5.5 Prior to any closure of the Central Gallery, the Balcony or the Circulation Route the Party wishing to close the relevant area shall :

- (a) provide the other Party with a list of advance or block bookings in respect of a rolling 12 month period; and
- (b) where any closure is required that is not identified by notification given in accordance with clause 5.5(a) of this Agreement:
 - (i) give to the other Party at least 48 hours of the proposed times between which the area will be closed (except in the case of emergency when as much notice as reasonably practicable must be given); and
 - (ii) take into account any objections or other representations made by the other Party in relation to the proposed closure and any detrimental effect it will have on that Party; and
 - (iii) take reasonable steps to mitigate any detrimental effect identified as a result of this procedure.

5.6 Both Parties shall use reasonable endeavours to make the Central Gallery, the Balcony and the Circulation Route open for use as often as possible.

5.7 The Tenant shall with the prior consent of the Landlord (such consent not to be unreasonably withheld or delayed) be entitled to use the Terrace outside of Museum Opening Hours for any use consistent with the Permitted Use of the Hall provided that such use does not include any activities that unduly conflict with the use of the Terrace as a museum display area.

5.8 In determining whether to grant consent to the Tenant to use the Terrace it shall be reasonable for the Landlord to refuse consent on the grounds that the Landlord has reasonable grounds to consider that:

- (a) the security of the Building may be at risk; or
- (b) the safety of the Building or the visitors to the Building may be at risk;

nothing in this clause shall prevent the Landlord from refusing consent in any other circumstance where it is reasonable to do so.

5.9 In determining whether to grant consent to the Tenant to use the Terrace it shall be reasonable for the Landlord to impose any condition on use on the grounds that the Landlord acting reasonably considers that it is necessary to do so to:

- (a) preserve the security of the Building; or
- (b) preserve the safety of the Building or the visitors to the Building

(c) prevent nuisance to residents and businesses in the local amenity
nothing in this clause shall prevent the Landlord from giving consent subject to any other reasonable condition.

5.10 Where the Terrace is used by the Tenant outside of Museum Opening Hours the Tenant shall at its own cost ensure that prior to the next opening of the Museum:

- (a) all litter is removed from the Terrace; and
- (b) the Terrace is cleaned and tidied in accordance with the Cleaning Standards; and
- (c) any furniture within the Terrace is laid out in the usual arrangement as established from time to time.

6. COMMON PARTS

6.1 Subject to the remaining provisions of this clause 6 the Landlord shall expeditiously:

- (a) maintain and repair the Common Parts;
- (b) keep the Common Parts clean and tidy in accordance with the Cleaning Standards;
- (c) regularly empty litter bins within the Common Parts;
- (d) provide soap, paper, towels and other supplies for the toilets and washrooms;
- (e) decorate the internal parts of the Common Parts; and
- (f) clean the outside windows of the Building.

6.2 Where any part of the Common Parts is to be used by the Tenant outside of Museum Opening Hours the Landlord shall after the Museum has closed clean the Common Parts to the usual standard maintained by the Landlord within the Building.

6.3 Where any part of the Common Parts is used by the Tenant outside of Museum Opening Hours the Tenant shall at its own cost ensure that prior to the next opening of the Museum:

- (a) all litter is removed from the Common Parts and all litter bins located in the Common Parts are emptied;
- (b) the Common Parts are cleaned and tidied in accordance with the Cleaning Standards;

- (c) any furniture within the Common Parts is laid out in the usual arrangement as established from time to time; and
- (d) any soap, paper, towels and other supplies for the toilets and washrooms is replenished.

7. WATER, HEATING, LIGHTING AND AIR CONDITIONING

7.1 Save as provided at clause 7.4 below and subject to the remaining provisions of this clause 7 the Landlord shall at its expense:

- (a) provide a water supply to the Common Parts;
- (b) clean, maintain, repair and replace all service media for the supply and removal of water to the Common Parts;
- (c) provide lighting in the Common Parts, the Central Gallery and Terrace; and
- (d) clean, maintain, repair and replace lighting machinery and equipment on the Common Parts, the Central Gallery and Terrace; and
- (e) provide heating in the internal areas of the Common Parts, Central Gallery and Terrace; and
- (f) clean, maintain, repair and replace heating machinery and equipment serving the Common Parts, Central Gallery and Terrace;

7.2 The Landlord may in its discretion but after consultation with the Tenant and having regard to the Tenant's representations determine the level of heating and lighting required to service the Common Areas and Central Gallery.

7.3 Subject to the remaining provisions of this clause 7 the Landlord may at its cost provide air conditioning for the internal areas of the Common Parts and Central Gallery.

7.4 The Tenant shall pay to the Landlord on demand the sum calculated by the Landlord or determined by metering within the Building as being the cost of supplying water, electricity and gas to the Common Parts and the Central Gallery at any time outside of the Museum Opening Hours.

8. SECURITY

8.1 The Landlord shall endeavour to maintain a security system in the Building that provides for the following three zones:

- (a) The Tenant's Property (which for the purpose of this Agreement shall be zone A);

- (b) The Common Areas, Central Gallery and Terrace (which for the purpose of this Agreement shall be zone B); and
- (c) The Museum (which for the purpose of this Agreement shall be zone C)

8.2 The Tenant shall have:

- (a) unrestricted security access to zone A;
- (b) security access to zone B as determined by the Landlord;
- (c) no security access to zone C

8.3 Subject to this clause 8 the Landlord shall be responsible for cleaning, maintaining, repairing, operating and replacing security machinery and equipment in the Building.

8.4 The Tenant shall pay to the Landlord on demand a fair proportion of the cost of cleaning, maintaining, repairing, operating and replacing security machinery calculated in accordance with user to be determined by the Landlord acting reasonably.

8.5 The Tenant shall comply at all times with the requirements and recommendations of the Landlord or any security firm engaged to assist the Landlord in maintaining security of the Building.

8.6 Wherever the security machinery or equipment is located in the Tenant's Property the Tenant shall:

- (a) permit the Landlord to access the Tenant's Property at all reasonable times for the purpose of cleaning, maintaining, repairing, operating and replacing security machinery and equipment
- (b) take all necessary steps to prevent damage to the security machinery and equipment by the users of the Tenant's Property
- (c) give the Landlord immediate notice of the occurrence of any damage to the security machinery or equipment

8.7 Whenever the Building is used or accessed by the Tenant outside of Museum Opening Hours before vacating the Building the Tenant must conduct a thorough check of the Building to ensure that all windows and external doors are secure and that all visitors and users of the Tenant's Property have vacated the Building.

9. WASTE REMOVAL

- 9.1 The Landlord shall designate for use by the Tenant sufficient space in the External Areas for two paladin waste containers.
- 9.2 The Tenant shall at its own cost:
- (a) at all times ensure that there are two paladin waste containers stored by the Tenant in the designated part of the External Areas;
 - (b) regularly maintain, empty and clean the waste containers; and
 - (c) place all waste removed by the Tenant from the Building (whether from the Tenant's Property, the Common Areas, the Central Gallery or the Terrace) in the Tenant's waste containers ensuring that there is no side waste and that no waste generated by users of the Tenant's Property is placed in the Landlord's waste containers.

10. FIRE SAFETY EQUIPMENT

- 10.1 Subject to this clause 10 the Landlord shall be responsible for cleaning, maintaining, repairing, operating and replacing fire safety machinery and equipment in the Common Parts and the Central Gallery.
- 10.2 The Tenant shall pay to the Landlord on demand a fair proportion of the cost of cleaning, maintaining, repairing, operating and replacing fire safety machinery calculated in accordance with user to be determined by the Landlord acting reasonably.
- 10.3 The Tenant shall comply at all times with the requirements and recommendations of the Landlord and any fire safety firm engaged to assist the Landlord in maintaining fire safety in the Building.
- 10.4 Wherever the fire safety machinery or equipment is located in the Tenant's Property the Tenant shall:
- (a) permit the Landlord to access the Tenant's Property at all reasonable times for the purpose of cleaning, maintaining, repairing, operating and replacing fire safety machinery and equipment
 - (b) take all necessary steps to prevent interference with or damage to the fire safety machinery and equipment by the users of the Tenant's Property
 - (c) give the Landlord immediate notice of the occurrence of any damage to the fire safety machinery or equipment

11. HEALTH AND SAFETY

- 11.1 The Tenant shall be responsible for carrying out regular health and safety assessments of the Tenant's Property and for complying with all health and safety legal requirements in accordance with clause 27 of the Lease.
- 11.2 The Landlord shall be responsible for carrying out health and safety assessments of the Common Areas, Central Gallery and Terrace and may as a result of any assessment at any time restrict or regulate the use of the Building provided that in doing so the Landlord shall:
- (a) take into account any objections or other representations made by the Tenant in relation to the proposed restrictions and any detrimental effect it will have on the Tenant; and
 - (b) take reasonable steps to mitigate any detrimental effect identified as a result of this procedure.
- 11.3 The Tenant shall ensure that all users of the Tenant's Property comply with any restriction or regulation imposed by the Landlord in accordance with clause 11.2 and that any conditions of use placed on users of the Tenant's Property by the Tenant in respect of the Common Areas, the Terrace and the Central Gallery are no less onerous than those imposed by the Landlord under clause 11.2.

12. DEFAULT INTEREST

If any money payable under this Agreement has not been paid by the date it is due, whether it has been formally demanded or not, the Party under an obligation to pay shall pay the other Party interest at the Default Interest Rate (both before and after any judgment) on that amount for the period from the due date to and including the date of payment.

13. ALIENATION

This Agreement is personal to the Parties and neither the Landlord nor the Tenant may assign, charge or part with its interest in this Agreement or any part of it nor agree to do so.

14. DURATION OF THIS AGREEMENT

- 14.1 This Agreement shall commence on the date hereof.
- 14.2 This Agreement shall immediately end (but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant) on the earliest of the following:

- (a) the date that the Lease comes to an end (however that may be)
- (b) the date that the Lease is assigned
- (c) the date that any new agreement commences pursuant to a review under clause 17 of this Agreement.

15. PUBLICITY AND ADVERTISING

Any material produced by the Tenant (including but not limited to publicity material and other advertising media) shall:

- (a) acknowledge that the Tenant's occupation of the Building arises from a relationship between the Parties to benefit the community; and
- (b) incorporate the North Hertfordshire District Council logo.

provided that the above obligations shall only apply to materials directed to regular local users of the Tenant's Property.

16. LIAISON ARRANGEMENTS

16.1 Liaison arrangements to ensure the effective co-ordination of operational matters shall primarily be through a weekly meeting between Hitchin Town Hall Ltd and NHDC on site. This will ordinarily be attended by the representative of Hitchin Town Hall Ltd responsible for the day to day operations of The Town Hall and the Cultural Services Manager responsible for the day to day operations of The North Hertfordshire Museum but may also be attended from time to time by other representatives as appropriate'.

16.2 The Landlord and the Tenant shall:

- (a) meet weekly to discuss any issues arising in relation to this Agreement or the management and operation of the Building.
- (b) supply to each other such information relating to their proposed events timetable and use of the Building as may reasonably be required to enable the other Party to manage its use of the Building
- (c) act in good faith in relation to their obligations under this Agreement and the management and operation of the Building

16.3 The Tenant shall use reasonable endeavours to comply with any request of the Landlord to attend a public meeting or a meeting at North Hertfordshire District Council where there is a reasonable expectation that the management and operation of the Building will be discussed at the meeting

16.4 In relation to any issue arising in connection with this Agreement where the Tenant is dissatisfied:

- (a) the Tenant shall before taking any formal steps in relation to the matter write to the Landlord setting out the issue and the reason why the Tenant is dissatisfied;
- (b) the Landlord shall within 20 Working Days of receiving the letter respond in writing to the Tenant with proposals for resolving the issue

16.5 The Landlord and Tenant shall work together and use reasonable endeavours to resolve any disputes that arise in relation to this Agreement or the management and operation of the Building in an informal manner.

16.6 In the event of any dispute the Landlord and the Tenant shall attempt to resolve the issue by referring it for discussion between the Parties using the following hierarchy:

Hitchin Town Hall representative responsible for day to day operations	Cultural Services Manager
Hitchin Town Hall Director	NHDC Strategic Director
Hitchin Town Hall Chairman	NHDC Chief Executive

17. REVIEW OF THIS AGREEMENT

17.1 This Agreement shall be reviewed periodically throughout the Contractual Term in accordance with the terms of this clause 17.

17.2 If the Tenant wishes to review this Agreement then it shall serve notice on the Landlord notifying the Landlord of the Tenant's wish to review this Agreement explaining:

- (a) the issues to be addressed by the proposed review and in particular:
 - (i) any clauses that the Tenant wishes to delete in their entirety
 - (ii) any clauses that the Tenant wishes to review
 - (iii) any new clauses that the Tenant wishes to introduce
- (b) the Tenant's reason for proposing a review of each of the issues identified

17.3 In response to any notice served by the Tenant under clause 17.2 the Landlord must agree to review this Agreement unless the Agreement has been reviewed in the previous calendar year with a view to addressing the issues identified by the proposed review.

17.4 If the Landlord wishes to review this Agreement then it shall serve notice on the Tenant notifying the Tenant of the Landlord's wish to review this Agreement explaining:

- (a) the issues to be addressed by the proposed review and in particular:
 - (i) any clauses that the Landlord wishes to delete in their entirety
 - (ii) any clauses that the Landlord wishes to review
 - (iii) any new clauses that the Landlord wishes to introduce
- (b) the Landlord's reason for proposing a review of each of the issues identified

17.5 The Landlord shall not propose to review this Agreement to address any issue that has been addressed by a review of this Agreement in the previous calendar year.

17.6 In response to any notice served by the Landlord under clause 17.4 the Tenant must agree to review this Agreement unless the Agreement has been reviewed in the previous calendar year with a view to addressing the issues identified by the proposed review.

18. RIGHTS IN THE EVENT OF DEFAULT

18.1 In the event that either Party shall fail with all due speed to comply with its obligations pursuant to Clauses 4.6, 5.1, 5.3, 5.10, 6.1, 6.2, 6.3, 7.1 or 9.2 the other Party on reasonable written notice (or if works are required as a matter of emergency) then immediately the other Party may engage contractors to carry out any necessary works or take such other appropriate action as the circumstances dictate.

18.2 The reasonable and proper costs incurred by the relevant Party in carrying out such works or actions shall be a debt due from the other Party and payable on demand.

19. INDEMNITY AND NON PAYMENT

19.1 The Tenant shall keep the Landlord indemnified against all expenses, costs, claims, damage and loss arising from any breach of any tenant covenants in this Agreement, or any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Building with the actual or implied authority of any of them.

- 19.2 Without prejudice to the generality of the indemnity at clause 19.1 the Tenant shall pay to the Landlord on demand such sums as are required to make good any damage to the Central Gallery, the Terrace, the Common Parts, the security machinery and equipment and the fire safety equipment caused by the Tenant or its visitors.
- 19.3 The Landlord must give the Tenant reasonable notice of any claim or demand and no admission of liability, settlement or compromise is to be made without the consent of Tenant.
- 19.4 Where the Landlord has made a demand in accordance with clause 19.2 and the Tenant has not paid the sum of money due within 60 days of the date of demand the Landlord may until the debt is settled close the Central Gallery, the Terrace and Common Areas so as to prevent the Tenant and its visitors from accessing the area outside of Museum Opening Hours and any such closure shall not be subject to the terms of this Agreement.

20. LIABILITY

- 20.1 At any time when the Landlord or the Tenant is more than one person, then in each case those persons shall be jointly and severally liable for their respective obligations arising by virtue of this Agreement. The Landlord may release or compromise the liability of any one of those persons or grant any time or concession to any one of them without affecting the liability of any other of them.
- 20.2 In any case where the facts are or should reasonably be known to the Tenant, the Landlord shall not be liable to the Tenant for any failure of the Landlord to perform any obligation on the Landlord under the terms of this Agreement unless and until the Tenant has given the Landlord notice of the facts that give rise to the failure and the Landlord has not remedied the failure within a reasonable time.

21. NOTICES

- 21.1 The Parties shall nominate at least two people who are regularly present at the Building to take receipt of any notices served under this Agreement.
- 21.2 Any notice delivered by hand to a person nominated under clause 21 shall be validly served.
- 21.3 Save as provided for in this clause 21 the provisions of the Lease with regard to notices shall apply to this Agreement.

22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

Executed as a deed by affixing the seal of NORTH HERTFORDSHIRE DISTRICT COUNCIL in the presence of:

.....
Authorised signatory

Executed as a deed by HITCHIN TOWN HALL LIMITED acting by two directors or a director and the company secretary

.....
Director

.....
Director **OR** Secretary