



**DATED**

**201**

**MANAGEMENT AGREEMENT**

**RELATING TO**

**PART OF NORTH HERTFORDSHIRE MUSEUM AND COMMUNITY FACILITY**

**BETWEEN**

**HITCHIN TOWN HALL GYMNASIUM AND WORKMANS HALL TRUST**

**AND**

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**THIS MANAGEMENT AGREEMENT** is dated 201[X]

**PARTIES**

- (1) HITCHIN TOWN HALL GYMNASIUM AND WORKMANS HALL TRUST, a charity registered in England and Wales with charity number (233752) of Council offices, Gernon Road, Letchworth, Hertfordshire, SG6 3JF (**Trust**).
- (2) NORTH HERTFORDSHIRE DISTRICT COUNCIL of Council offices, Gernon Road, Letchworth, Hertfordshire, SG6 3JF (**Council**).

**RECITALS**

- (A) The Trust was created for the purpose of achieving the Trust Objectives. The Council is the sole trustee of the Trust. The Council has delegated the function of acting as the trustee to the Trust Sub-Committee.
- (B) Hitchin Town Hall is currently an integrated building comprising the Council's Property and the Gymnasium. The Council is intending to develop Hitchin Town Hall together with 14 Brand Street in order to create a new district wide museum, community hall and café. It is intended that on completion of the development 14 Brand Street will be transferred to the Trust so that the total land holding of the Trust within the new development will be the Trust Property.
- (C) Following completion of the development, the Council intends to operate the museum and lease the community hall and café to HTH Limited. At this stage the café and part of the museum will be located on the Trust Property. The Parties are entering into this agreement with the objective of giving the Council sufficient control over the Trust Property to enable it to run the museum and enforce the proposed lease to HTH Limited.
- (D) The purpose of this Agreement is to set out each Party's rights and obligations in relation to the Trust Property.
- (E) The intention of the Parties is to pass management of the Trust Property to the Council so that the Council has complete operational responsibility for the building as a whole subject to complying with the terms of this Agreement.
- (F) The intention of the Council is that other than for public holidays and where particular maintenance requirements occur necessitating the closure of the building it will ensure that the Trust Property is available for use throughout the year.

- (G) The Trust and the Council 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.

## **AGREED TERMS**

### **1. INTERPRETATION**

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

**Council's Property:** Hitchin Town Hall, Brand Street, Hitchin, SG5 1JE as is registered at the land registry under title number HD488762

**Financial Year:** 1<sup>st</sup> April – 31<sup>st</sup> March

**Gymnasium:** the Workman's Hall, Gymnasium and road to the rear of Hitchin Town Hall all of which is located at Brand Street, Hitchin, SG5 1JE as is registered at the land registry under title number HD506432

**HTH Limited:** a charity incorporated and registered in England and Wales with company number (07974116) whose registered office is at 13 Bancroft, Hitchin, Hertfordshire, SG5 1JQ and whose registered Charity No. is XXXX

**Management:** all those operational responsibilities for the Trust Property set out in Clause 4

**Neighbouring Property:** a property in close proximity

**Party:** the Council or the Trust and where the context allows Parties shall mean both of them

**Permitted Use:** the Primary Use and other purposes that meet or are ancillary to the Trust Objectives and meet the Public Benefit test set out in the Charity Commission's general guidance on public benefit

**Primary Use:** the use of the Trust Property as a museum facility for the benefit of the beneficiaries of the Trust and the residents of North Hertfordshire more generally and for any other purpose to which the Trust shall consent (such consent not to be unreasonably withheld or delayed)

**Trust Objectives:** the objectives set out in a Conveyance dated 5 March 1934 made between Francis Ransom and Hugh Exton Seebohm (1) and the Urban District Council of Hitchin (2) namely "for use as a gymnasium for the benefit of the inhabitants of the Urban District of Hitchin.... And for such other purposes as are mentioned in Section 6 sub-section (3) of the Museums and Gymnasiums Act 1891 and also ...for any other purpose for the benefit of the inhabitants of the said District for which the Council under their statutory powers is entitled to use buildings and land vested in them"

**Trust Property:** such parts of the Gymnasium and 14 Brand Street as are registered to the Trust at the land registry from time to time

**Trust Sub-Committee:** the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) acting on behalf of North Hertfordshire District Council as a corporate trustee of the Hitchin Gymnasium and Workmans Hall Trust

**14 Brand Street:** the freehold property at 14 Brand Street, Hitchin shown forming part of registered title number HD512543 as at the date of this agreement

- 1.2 Unless the context otherwise requires, references to the **Trust Property** are to the whole and any part of them or it.
- 1.3 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal responsibility).
- 1.5 Any obligation in this Agreement on the Council not to do something includes an obligation not to agree to or suffer that thing to be done and an obligation to use all reasonable endeavours to prevent that thing being done by another person.

## **2. RESPONSIBILITY FOR THE TRUST PROPERTY**

- 2.1 For the duration of this Agreement the Management of the Trust Property shall be the responsibility of the Council.
- 2.2 The Council may allocate Management of all or part of the Trust Property to HTH Limited.
- 2.3 Save as referred to in clause 2.2 the Council shall not allocate Management of the Trust Property to any other person without the prior consent of the Trust such consent not to be unreasonably withheld or delayed.
- 2.4 The Council shall not grant any right or licence over the Trust Property to any person nor permit any person to make any encroachment over the Trust Property without the consent of the Trust such consent not to be unreasonably withheld or delayed.

### **3. USE**

- 3.1 The Trust hereby grants the Council the right to use the Trust Property.
- 3.2 The Council shall:
- (a) not use the Trust Property for any purpose other than the Permitted Use; and
  - (b) comply with all covenants and restrictions affecting the registered titles of the Trust Property so far as the same are subsisting
  - (c) use its reasonable endeavours to ensure that members of the public living or working within the catchment area of the Trust Property are aware of the Primary Use of the Trust Property and the availability of the Trust Property for use by the community; and
  - (d) use its reasonable endeavours to secure such use in accordance with the Permitted Use so as to prevent the Trust Property from becoming disused or abandoned; and
- 3.3 In the event that the Council makes any part of the Trust Property available for public hire and the Trust Property is requested by more than one hirer at any one time the Council shall give precedence to any hirer resident within the boundary of the urban area of Hitchin over any hirer not resident within that boundary PROVIDED THAT for the avoidance of doubt this clause shall not apply to any hiring arrangements put in place by HTH Limited or any other person allocated Management by the Council of any part of the Trust Property in accordance with clause 2.3.
- 3.4 The Council shall not use the Trust Property for any purpose or in a manner that would cause loss, damage, injury or nuisance to the Trust or any owner or occupier of Neighbouring Property nor for any illegal purpose.

### **4. MANAGEMENT OF THE TRUST PROPERTY**

- 4.1 The Council shall be responsible at its own cost for taking all steps necessary to ensure the Trust Property complies with
- (a) all fire safety legislation; and
  - (b) all health and safety legislation; and
  - (c) all licensing legislation; and
  - (d) all other legislation relevant to the use of the Trust Property by the Council

- 4.2 The Council shall be responsible at its own cost for keeping the Trust Property secure and clean and tidy and in good and substantial repair and condition.
- 4.3 The Council shall be responsible at its own cost for obtaining all relevant insurance policies including but not limited to buildings insurance and public liability insurance.
- 4.4 The Council shall be responsible for all expenses, costs, claims, damages and loss arising in respect of the Trust Property.
- 4.5 The Council shall provide promptly any information reasonably requested by the Trust from time to time for the purposes of reporting to the Charity Commission or the Trust Sub-Committee including but not limited to
- (a) financial information
  - (b) Trust Property usage information

## **5. INCOME GENERATED**

- 5.1 On or before 31 May each year the Council shall calculate:
- (a) the income received by the Council that has been generated from the Trust Property in the preceding two Financial Years; and
  - (b) the cost of the Management of the Trust Property in the preceding two Financial Years.
- 5.2 In the event that the figure calculated in accordance with clause 5.1(a) is less than or equal to the figure calculated in accordance with clause 5.1(b) there shall be no payment due from either Party to the other.
- 5.3 In the event that the figure calculated in accordance with clause 5.1(a) is more than the figure calculated in accordance with clause 5.1(b) then the Council shall hold the surplus for twelve months pending the calculation at clause 5.1 for the subsequent Financial Year. Once the calculation for the next Financial Year has been completed then if there is a loss it shall be subtracted from the surplus for the previous year and if there is a gain it shall be added to the surplus for the previous year. If there remains a surplus after two Financial Years then the Council shall pay the surplus to the Trust.

### ***Worked example 1:-***

*Year One – income £50k, cost £50k*

*Year Two – income £75k, cost £50k*

*At the end of Year Two the calculation shows a surplus of £25k, which is held pending the calculation of Year Three*

*Year Three – income £50k, cost £60k*

*At the end of Year Three the £10k deficit is deducted from the carried forward surplus of £25k and the remaining surplus of £15k is paid to the Trust. For future calculations the carried forward sum is £0 (the Year Three loss having been met)*

*Year Four – income £55k, cost £50k*

*At the end of Year Four the surplus is therefore £5k.*

**Worked example 2:-**

*Year One – income £50k, cost £60k*

*Year Two – income £50k, cost £65k*

*At the end of Year Two the calculation shows a loss of £25k, which under clause 5.2 means there is no payment from either party in respect of Year One and this loss is absorbed by the Council. The carried forward figure is the deficit of £15k from Year Two.*

*Year Three – income £50k, cost £55k*

*At the end of Year Three the calculation shows a loss of £20k which under clause 5.2 means there is no payment from either party in respect of Year Two and this loss is absorbed by the Council. The carried forward figure is the deficit of £5k from Year Three.*

*Year Four – income £60k, cost £50k*

*At the end of Year Four the £5k carried forward deficit is deducted from the Year Four surplus of £10k. For future calculations the carried forward sum is therefore £5k.*

**6. RIGHTS GRANTED**

- 6.1 The Council is to have the benefit of any rights of way or easements appearing on the registered title of the Trust's Property.
- 6.2 The Trust shall have a right of emergency access across the Council's Property and the Council shall have a right of emergency access across the Trust Property.

**7. NO RIGHTS**

Nothing in this Agreement is intended to or shall be deemed to establish for the Council or any other party any estate in land over the Trust Property.

**8. ALIENATION**

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

## **9. DURATION AND TERMINATION OF THIS AGREEMENT**

- 9.1 The provisions of this Agreement and the obligations on the Council contained herein shall commence on the date hereof and remain in force until this Agreement is terminated in accordance with this clause.
- 9.2 This Agreement shall immediately end (but without prejudice to any right or remedy of the Trust in respect of any breach of this Agreement by the Council) on the earliest of the following:
- (a) the expiry of not less than three months notice given by the Trust to the Council at any time specifying a breach of any of the Council's obligations contained in clauses 2.3, 2.4, 3, 4 and 5.
  - (b) the expiry of not less than twelve months notice given by either Party to the other such notice not permitted within five years from the date of this Agreement
- 9.3 The Trust and Council 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 Trust Property in an informal manner.

## **10. REVIEW OF THIS AGREEMENT**

- 10.1 This Agreement shall be reviewed periodically throughout its duration in accordance with the terms of this clause 10.
- 10.2 If the Council wishes to review this Agreement then it shall serve notice on the Trust notifying the Trust of the Council'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 Council wishes to delete in their entirety
    - (ii) any clauses that the Council wishes to review
    - (iii) any new clauses that the Council wishes to introduce
  - (b) the Council's reason for proposing a review of each of the issues identified
- 10.3 In response to any notice served by the Council under clause 10.2 the Trust 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.



10.4 If the Trust wishes to review this Agreement then it shall serve notice on the Council notifying the Council of the Trust'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 Trust wishes to delete in their entirety
  - (ii) any clauses that the Trust wishes to review
  - (iii) any new clauses that the Trust wishes to introduce
- (b) the Trust's reason for proposing a review of each of the issues identified

10.5 In response to any notice served by the Trust under clause 10.4 the Council 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.

## **11. INDEMNITY**

11.1 The Council shall keep the Trust indemnified against all expenses, costs, claims, damage and loss arising from the use of the Trust Property, any breach of any requirements in this Agreement, or any act or omission of the Council, any undertenant or their respective workers, contractors or agents or any other person on the Trust Property with the actual or implied authority of any of them.

11.2 The Trust must give the Council reasonable notice of any claim or demand and no admission of liability, settlement or compromise is to be made without the consent of Council.

## **12. ACQUISITION OF 14 BRAND STREET**

In respect of the proposed transfer of 14 Brand Street from HTH Limited to the Trust the Council shall indemnify and keep indemnified the Trust against all expenses, costs, claims, damage, taxes and loss arising from the transfer including but not limited to stamp duty land tax, party wall agreements, land registry fees and surveyors costs.

## **13. NOTICES**

13.1 Any notice served on the Trust under this Agreement shall be sent to the Head of Revenues, Benefits and IT.

13.2 Any notice served on the Council under this Agreement shall be sent to the Strategic Director of Customer Services.

13.3 Any notice delivered by hand to a person nominated under clause 13 shall be validly served.

**14. 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.

DRAFT

Signed on behalf of HITCHIN  
TOWN HALL GYMNASIUM AND  
WORKMANS HALL TRUST

.....  
Authorised signatory

Signed on behalf of NORTH  
HERTFORDSHIRE DISTRICT  
COUNCIL

.....  
Authorised signatory

DRAFT