

DATED

BEACH HUT AGREEMENT (COMMERCIAL)

between

COLCHESTER BROUGH COUNCIL

and

THIS BEACH HUT AGREEMENT (Commercial) is dated

PARTIES

- (1) COLCHESTER BOROUGH COUNCIL whose office is at Rowan House, 33 Sheepen Road, Colchester Essex CO3 3WG (**Council**).
- (2) **(Permitted User)**.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Agreement: means this Beach Hut Agreement

Site: mean site number xxx on the Beach and Greensward, West Mersea, Essex.

Beach Hut: means the beach hut to be erected on the Site by the Permitted User which should not exceed the size detailed in the table below and there must remain a minimum 500mm gap between each beach hut to enable them to be properly maintained:

	Height	Width	Depth
Plot size		2.40 metres	3.60 metres
Beach hut size (max)	3.00 metres	2.30 metres	3.60 metres

Or small (delete as necessary)

	Height	Width	Depth
Plot size		1.80 metres	3.00 metres
Beach hut size (max)	3.00 metres	1.70 metres	3.00 metres

Common Parts: such roads, paths, of which is necessary for obtaining access to and egress from the Site and/or Beach Hut as designated from time to time by the Council.

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: between 7 a.m. to 11 p.m. or such other hours as the Council in its absolute discretion may determine on one weeks' notice to the Permitted User.

Family Member means husband, wife, child or parent of the Permitted User

Fee : the amount of £xxxx per year or part year payable in advance on or before the date of this Agreement which may be varied from time to time by the Council on giving the Permitted User not less than one months prior notice before the revised Fee is payable.

Fee Commencement Date: the date of this Agreement.

Transfer Fee means £250.00 which may be increased each year by the Council giving not less than one months written notice to the Permitted User

Term: six years from and including the date of this Agreement or the date on which this Agreement is determined in accordance with clause 4.

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: to erect and use the Beach Hut on the Site for social recreational purpose subject to the terms of this Agreement and only during the Designated Hours

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

- 1.2 Paragraph headings shall not affect the interpretation of this agreement.
- 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 agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however, incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.
- 1.9 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and to use its best endeavours to prevent such act or thing being done by a third party.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this licence; references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.13 The parties to this Agreement hereby acknowledge and agree that it supersedes and/or replaces any earlier agreements that may have been entered into between the parties in relation to the Site prior to the date of this Agreement

2. RIGHT TO OCCUPY

- 2.1 Subject to clauses 3 and 4 the Council permits the Permitted User to occupy and use the Site and/or the Beach Hut for the Permitted Use for the Term during the Designated Hours together with the rights mentioned in the Schedule.
- 2.2 The Permitted User acknowledges that:
- (a) the Council retains control, possession and management of the Site and the Permitted User has no right to exclude the Council from the Site;

3. PERMITTED USER'S OBLIGATIONS

- 3.1 The Permitted User agrees and undertakes:
- (a) to pay:

- (i) to the Council the Fee (including any revised Fee) which is payable without any deduction in advance on or before the date of this Licence together with such VAT as may be payable on the Fee; and
 - (ii) all outgoing and expenses in connection with its use of the Site and/or Beach Hut;
- (b) to keep the Site and/or the Beach Hut clean, tidy and clear of rubbish;
- (c) not to use the Site and/or the Beach Hut other than for the Permitted Use;
- (d) not to make any alteration or addition whatsoever to the Site except that the erection of the Beach Hut on the Site will not be a breach of this Agreement;
- (e) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Site and/or on the Beach Hut save for the site number; save the following; any temporary sign or temporary advertisement relating to the hire of the beach hut on which the sign or advertisement is displayed and such sign or advertisement not exceeding a size of 210mm x 300mm. The Permitted User will immediately remove any temporary sign or advertisement if deemed by the Council to be offensive.
- (f) not to do or permit to be done on the Site and/or the Beach Hut anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Council or to tenants or occupiers of neighbouring sites;
- (g) not to cause or permit to be caused any damage to:
 - (i) the Site or any neighbouring beach huts; or
 - (ii) any property of the owners or occupiers of any neighbouring sites;
- (h) not to obstruct the Common Parts, make them dirty or untidy or leave any rubbish on them;
- (i) not to apply for any planning permission in respect of the Site;
- (j) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Site;
- (k) to maintain the Beach Hut on the Site in good repair and condition and not allow cause or permit the Beach Hut (including anything attached to the Beach Hut) to extend beyond the Site
- (l) to observe any rules and regulations the Council makes and notifies to the Permitted User from time to time governing the Permitted User's use of the Site and/or the Beach Hut and/or the Common Parts;

- (m) to be aware of and abide by the beach byelaws ref;
- (n) to leave the Site in a clean and tidy condition and to remove the Permitted User's Beach Hut and goods from the Site at the end of the Term;
- (o) The Permitted User must notify the Council and provide the Council with full details and address for any third party (including a Family Member) this Agreement is transferred to in accordance with its terms.
- (p) To forthwith notify the Council in writing of any change of address
- (q) to indemnify the Council and keep the Council indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
 - (i) this Agreement;
 - (ii) any breach of the Permitted User's undertakings contained in clause 3; and/or
 - (iii) the exercise of any rights given in clause 2;
- (r) to store gas bottles securely and safely
- (s) to take out public liability insurance of no less than £5m for each and every event and for the insurance policy to be maintained during the term of this agreement and a copy of the Policy document to be made available to the Council on request..

3.2 If the Beach Hut is left on the Site for more than seven days after the expiry or termination of this Agreement then in that event the Permitted User hereby agrees that ownership of the Beach Hut (including any items that remain within the Beach Hut and/or on the Site) will be deemed to have automatically transferred to the Council and the Council will be free to use or dispose of the Beach Hut and/or any items at its sole discretion and the Permitted User will have no remedy against the Council and will indemnify the Council against any liability that may arise.

3.3 If the Council disposes of the Beach Hut and/or any items that remain within the Beach Hut and/or on the Site it will be entitled to recover its reasonable costs as a contractual debt from the Permitted User

3.4 Clause 3.2, 3.3 and any indemnity clauses contained or referred to in the Agreement will survive expiry or termination of this Agreement

4 TERMINATION

- 4.1 This Agreement shall end on the earliest of:
- i) On the expiry of the Term;
 - ii) The expiry of not less than three months written notice given by the Council to the Permitted User or by the Permitted User to the Council
- 4.2 Termination is without prejudice to the rights of either party in connection with any antecedent breach of any obligation subsisting under this Agreement.
- 4.3 The Council may re-enter the Site at any time after any of the following occurs:
- i) any Fee is unpaid 28 days after becoming payable whether it has been formally demanded or not; or
 - ii) any breach of any of the Permitted User's obligation and/or conditions or Permitted User covenant contained in this Agreement.
- 4.4 If the Council re-enters the Site pursuant to this clause, this Agreement shall immediately end, but without prejudice to any right or remedy of the Council in respect of any antecedent breach of this Agreement by the Permitted User.

5. ASSIGNMENT

- 5.1 Subject to Clause 5.2 the Permitted User is permitted to assign the whole of this Agreement to a Family Member without the payment of a Transfer Fee or to a Third Party (not being a Family Member) with the payment of a Transfer Fee
- 5.2 Any assignment that is permitted in accordance with clause 5.1 is subject to the relevant Family Member or relevant third party (as applicable) entering into direct covenants with the Council to comply with the terms of this Agreement
- 5.3 No sublet of part is permitted

6 SUBLET

6.1 The Permitted User is entitled to permit third parties to use the Beach Hut on an occasional add hoc basis (here meaning not more than four weeks at a time in relation to each and every individual sublet that is permitted by this Agreement) without the Council's consent subject to the following:-

- i) the use of the Beach Hut is for recreational purposes only
- ii) Occupation will cease on expiry or termination of this Agreement.
- iii) the Permitted User remains liable for any breach of this Agreement

6.2 The Permitted User is permitted to sublet the whole of the Site with the Council's prior written consent (such consent not to be unreasonably withheld) subject to the following:-

- i) the use of the Beach Hut is for recreational purposes only and no business is carried out from the Site and/or the Beach Hut
- ii) the term of any sublet does not extend beyond the term of this Agreement
- iii) occupation will cease on expiry or termination of this Agreement.
- iv) the Permitted User remains liable for any breach of this Agreement; and
- v) Occupation is on a licence only basis

7 LANDLORD AND TENANT ACT

7.1 The parties confirm that:

- i) the Council served a notice on the Permitted User, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this Agreement, not less than 14 days before this Agreement was entered into;
- ii) the Permitted User or [[NAME OF DECLARANT] who was duly authorised by the Permitted User to do so] made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954; and
- iii) there is no agreement for lease to which this Agreement gives effect.

- 7.2 The parties agree that the provisions of sections 24 to 28 of the LTA Act 1954 are excluded in relation to the tenancy created by this Agreement.

8 NOTICES

- 8.1 Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice [or communication] as set out below:
- 8.1.1 to the Council at the above address and marked for the attention of Community Zones Group Manager.
- 8.1.2 to the Permitted User at the above address .
or as otherwise specified by the relevant party by notice in writing to each other party.
- 8.2 Any notice or other communication shall be deemed to have been duly received:
- 8.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or
- 8.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second working day after posting; or
- 8.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 8.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.
- 8.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

9 NO WARRANTIES FOR USE OR CONDITION

- 9.1 The Council gives no warranty that the Site and /or the Beach Hut possesses the Necessary Consents for the Permitted Use.
- 9.2 The Council gives no warranty that the Site is suitable for the purposes specified in clause 2.

10 LIMITATION OF LICENSOR'S LIABILITY

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

10.1.1 the death of, or injury to the Permitted User, or its invitees to the Site or the Beach Hut; or

10.1.2 damage to any property of the Permitted User or that of the Permitted User's invitees to the Site and/or the Beach Hut; or

10.1.3 any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Permitted User or the Permitted User's invitees to the Site or the Beach Hut 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 Council's liability for:

10.2.1 death or personal injury or damage to property caused by negligence on the part of the Council or its employees or agents; or

10.2.2 any matter in respect of which it would be unlawful for the Council to exclude or restrict liability.

11 RIGHTS OF THIRD PARTIES

11.1 A person who is not a party to this agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

12 GOVERNING LAW AND JURISDICTION

12.1 This Agreement 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.

12.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

13 EXCLUSIONS OF IMPLIED RIGHTS

13.1 The Permitted User shall not be or become entitled to any right of access to light or air to the Site and/or the Beach Hut or to any other rights privilege or easement which would in any way restrict or interfere with the user of any adjoining or neighbouring property of the Council for building or any other purpose

14. JOINT AND SEVERAL LIABILITY

- 14.1 Where the Permitted User comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Permitted User arising under this Agreement. The Council may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.
- 14.2 The obligations of the Permitted User arising by virtue of this Agreement are owed to the Council and the obligations of the Council are owed to the Permitted User.
- 14.3 The Council shall not be liable to the Permitted User for any failure of the Council to perform any Council covenants in this Agreement, unless and until the Permitted User has given the Council notice of the failure and the Council has not remedied the failure within a reasonable time of service of that notice.

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

Schedule Rights granted to Permitted User

1. The right for the Permitted User to use the Site and/or the Beach Hut during the Designated Hours:
- 1.1 Such parts of the Common Parts for the purpose of access to and egress from the Site and/or the Beach Hut as shall from time to time be designated by the Council for such purpose.

Signed by [
]
for and on behalf of the Council
Signed by [
]

.....
Proper Officer

.....
Permitted User