

DATED

2020

Management Agreement



**Stephens Scown LLP
Osprey House
Malpas Road
Truro, TR1 1UT**

(Ref: OM/OKEH-2-3)

THIS AGREEMENT is made the day of

2020

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- (1) **Christine Marsh, Anthony Leech, Julie Yelland, Jan Goffey, Robert Tolley, Carole Holt and Paul Jessop** as Trustees of Simmons Park & Kempley Meadows and Cricket Fields Charity (Registered Number 1101388) Okehampton Town Council, Town Hall, Fore Street, Okehampton EX20 1AA ('the Trustees') and
- (2) **Okehampton Town Council** of Town Hall, Fore Street, Okehampton EX20 1AA ('the Council')

BACKGROUND

1. The Trustees are the trustees of Simmons Park & Kempley Meadows and Cricket Fields Charity ('the Charity'), the legal owner of Simmons Park as set out in an Indenture dated 1 June 1907 and as amended by a Deed of Variation dated [2020] following a merger on [2020] ('the Park');
2. The Trustees have requested that the Council undertake the management of the Park and the maintenance of the same on behalf of and for the benefit of the Charity as the Charity has limited funds;
3. The Trustees will continue to oversee and set the strategic plans for the Charity;
4. The Council has resolved that as the Park is for the benefit of the Town and Parish of Okehampton it will undertake the management and maintenance and other works on the basis set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

In this Agreement the following terms shall, except so far as the context otherwise requires, have the following meanings:

'the Works' means the Maintenance and other works as the parties shall agree from time to time

'the Period' means from the date of this Agreement for a period of 1 year and thereafter until determined in accordance with Clause 3

2. AGREEMENT

- 2.1. It is agreed by the Trustees that the Council shall manage the Park for the Period.

- 2.2. The Council will maintain the Park as a recreation ground for the benefit of the inhabitants of Okehampton and the neighbourhood without distinction of sex or political, religious or other opinions.
- 2.3. The Council will keep the Park in a condition that is no worse than as exists as the date of this Agreement and will maintain all structures in a good and substantial state of repair and condition replacing any structure or part of the a structure which is beyond economic repair unless requested not to do so by a duly constituted meeting of the Trustees.
- 2.4. The Council will not erect or permit to be erected any new structure on the Park other than those in respect of which is has consent at the date of this Agreement without the previous written consent of the Trustees.
- 2.5. The Council will take all reasonable steps to prevent nuisance and disorder and in particular to prevent any use which may be or become a nuisance or annoyance to the immediate neighbourhood of the Park.
- 2.6. The Council will impose on any person or organisation which uses the facilities on the Park those terms of hire rules and conditions (if any) as have previously been imposed by the Trustees subject to any additional terms.
- 2.7. All expenses incurred by the Council in the care and management of the Park will be paid by the Council who shall be entitled to be paid the income received from the Park as from the date of this Agreement.
- 2.8. The Council will effect such insurance as it shall deem appropriate and carry out risk assessments in accordance with the requirements of their insurers and comply with the requirements of such insurers from time to time. The Council shall ensure that the Trustees' interest is noted on each insurance policy, or that a generic interest clause has been included. At the written request of the Trustees, the Council shall provide the Trustees with a copy of each insurance policy.
- 2.9. Any works undertaken by the Council shall be carried out in a workmanlike manner exercising all the skill, care and diligence reasonably to be expected and the Council shall at all times ensure that all current legislation relating to Health and Safety and other provisions designed for the safety of the public is complied with.
- 2.10. The Council must comply with its obligations under this Agreement and undertake any works or maintenance diligently and in an efficient and cost-effective manner. If the Council is prevented or delayed in the performance of its obligations in whole or in part as a result of any negligence or other default of its employees, agents any other third party, the Council must notify the Trustees and use its reasonable endeavours to resume and expedite the

performance of its obligations so as to complete them with all possible speed.

3. TERMINATION

The rights granted in clause 2 shall determine as follows:

- 3.1. immediately on the service of notice by the Trustees on the Council at any time following any breach by the Council of its undertaking contained in Clause 2
- 3.2. on 3 months notice served by the Trustees on the Council
- 3.3. by 6 months notice served by the Council on the Trustees
- X 3.4. All notices served by either party pursuant to the provisions of this Agreement shall be in writing and shall be sufficiently served if delivered by hand or sent by recorded delivery to the address of the Clerk to the ^{Town} Parish Council and to the Secretary of the Trustees as notified to the Council from time to time.

4. LIMITATION OF LIABILITY

- 4.1. Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
 - 4.1.1. death or personal injury caused by negligence;
 - 4.1.2. fraud or fraudulent misrepresentation;
 - 4.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 4.2. The Council has obtained insurance cover in respect of certain aspects its own legal liability for individual claims not exceeding [£TBC] per claim. The limit in this clause reflects the insurance cover the Council has been able to arrange and the Trustees are responsible for making their own arrangements for the insurance of any excess liability.

5. ENTIRE AGREEMENT

- 5.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 5.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or

negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

6. VARIATION

6.1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties.

7. THIRD PARTY RIGHTS

7.1. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

8. GOVERNING LAW

8.1. This Agreement 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.

9. JURISDICTION

9.1. 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 Agreement or its subject matter or formation.

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

IN WITNESS this Agreement has been executed as a Deed
by Simmons Park & Kempley Meadows and Cricket Fields
acting by two Trustees

.....
Trustee

.....
Trustee

IN WITNESS this Agreement has been executed as a Deed
by **Okehampton Town Council** as a Local Authority
acting by two Councillors

.....
Councillor

.....
Councillor