

DATED:

**The Incumbent of Todmorden St Mary,
with Cornholme St Michael**

and

**The Parochial Church Council of Todmorden St Mary,
with Cornholme St Michael**

and

Todmorden Church of England VA Primary School

And

**Leeds Diocesan Board of Education,
acting via Leeds Diocesan Board of Finance**

**LEASE FOR PART OF CHRISTCHURCH CHURCHYARD, TODMORDEN
FOR NURSERY PROVISION**

**PURSUANT TO S.68 MISSION AND PASTORAL MEASURE 2011, AS AMENDED
BY THE MISSION AND PASTORAL (AMENDMENT) MEASURE 2018**

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This Lease is dated

PARTIES

The Incumbent of Todmorden St Mary with Cornholme St Michael and

The Parochial Church Council of Todmorden St Mary with Cornholme St Michael,

Tel: 07711 611201

Email: Catherine.Shelley@leeds.anglican.org

(Lessor).

and

Todmorden Church of England VA Primary School

And Leeds Diocesan Board of Education, acting via Leeds Diocesan Board of Finance

Tel:

Email:

(Lessee)

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Annual Rent: at the rate of £100 per annum.

Permitted Use: For the erection and maintenance by the Lessee of The Woodlands Nursery, School, Community and wrap around provision for use by the Lessee (“the Nursery”)

Permitted Hours: Monday–Friday, 7am–7pm;

Property: That portion of the Churchyard that lies beneath the Nursery and access thereto at the Northwest corner of Christchurch Churchyard as outlined in Red on the site plan annexed hereto

Service Media: all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

Term: A term of 10 years beginning on TBA and ending on TBA

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

- 1.2 A reference to this lease, except a reference to the date of this lease, is a reference to this lease and consent, approval or other instrument supplemental to it.
- 1.3 Unless the context otherwise requires, references to the Building, the Common Parts and the Property are to the whole and any part of them or it.
- 1.4 A reference to the end of the Term is to the end of the Term however it ends.
- 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 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.
- 1.7 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.
- 1.8 Any obligation on the Lessee not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by any other person.
- 1.9 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this lease.
- 1.11 Clause headings shall not affect the interpretation of this lease.
- 1.12 Unless the context otherwise requires, 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 A reference to writing or written includes fax, email or other electronic written correspondence.
- 1.14 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.15 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2. LEASE

- 2.1 The LESSOR lets the use of the Property to the Lessee for the Term of this Lease
- 2.2 The Lessee agrees to pay to the Lessor the Rent and all other sums due under this Lease or any review thereof
- 2.3 This Lease shall be excluded from any protections or rights of Security of Tenure under the Landlord and Tenant Act 1954. A warning notice has been served in respect of this Exclusion.

3. ANCILLARY RIGHTS

- 3.1 The Lessor grants the Lessee the following rights (the **Rights**) to use in common with the Lessor and any other person authorised by the Lessor:
- (a) the right of support and protection from those parts of the Property that afford support and protection for the Property at the date of this lease and to the extent that such support and protection exists at the date of this lease;
 - (b) the right to use the gate in the fence for the purposes of access to and egress from the Property;
 - (c) the right of access on foot between the Churchyard and School premises
 - (d) the right to erect and maintain a fence around the Property between the Lessee's premises and the Churchyard
- 3.2 The Lessee shall exercise the Rights:
- (a) only in connection with its use of the Property for the Permitted Use and in a manner that is consistent with its obligations in clause 9.2;
 - (b) in accordance with any regulations made by the Landlord as mentioned in clause 9.5; and
 - (c) in accordance with all relevant laws.

4. THE ANNUAL RENT AND OTHER PAYMENTS

- 4.1 The Lessee shall pay the Annual Rent and any VAT in respect of it, if applicable, by one annual payment in advance.

- 4.2 The first instalment of the Rent and any VAT in respect of it shall be made on the date of this Lease and shall be the proportion, calculated on a daily basis, in respect of the period beginning on, and including, the date of this lease and ending on, and including, the day before the next rent payment date.
- 4.3 The Lessee shall pay the costs and expenses incurred as a result of any breach of this Lease (assessed on a full indemnity basis), or as a result of additional costs incurred; e.g., for provision of licences outside the scope of this agreement.
- 4.4 If any Annual Rent or any other money payable under this license has not been paid by the date it is due, whether it has been formally demanded or not, the Lessee shall pay the Lessor interest on that amount at the Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.
- 4.5 The Annual Rent and all other money due under this licence are to be paid by the Lessee without deduction, counterclaim or set-off.

5. INSURANCE

- 5.1 The Lessee shall keep the Property and the Nursery Building erected thereon (the Nursery Building) insured against loss or damage under the Occupiers Liability Act and by fire and such other risks as the Lessor considers it prudent to insure against, provided that such insurance is available in the market on reasonable terms acceptable to the Lessee. The Lessee shall inform the Lessor of the relevant terms of its insurance policy.
- 5.2 If the Property or the Nursery Building is damaged or destroyed, by a risk against which either the Lessor or the Lessee has insured, so as to make the Property unfit for occupation and use, then the Lessor or the Lessee may determine this lease by giving notice to the other parties.
- 5.3 If this lease is terminated pursuant to this clause, then the termination shall be without prejudice to any right or remedy of the Lessor in respect of any antecedent breach by the Lessee of any of the covenants of this Lease.
- 5.4 Nothing in this clause shall oblige the Lessor to repair the Building.

6. SERVICES

- 6.1 The Lessor shall use its reasonable endeavours:
- (a) to keep clear the entrance of the gate to the Property and
 - (b) not to disrupt any use of the gate and access between the Property and the rest of the Churchyard

- 6.2 The Lessor shall not be liable for any loss or inconvenience arising from any failure or interruption of any service mentioned in clause 6.1 (or any other service provided by the Lessor) due to the carrying out of any necessary repairs or servicing nor due to any act or omission that is beyond the reasonable control of the Lessor (other than any loss or inconvenience in respect of which the law prevents the Lessor excluding liability).

7. PROHIBITION OF DEALINGS

The Lessee shall not assign, underlet, charge, part with or share possession or share occupation of this licence or the Property or assign, part with or share any of the benefits or burdens of this licence, or in any interest derived from it, whether by a virtual assignment or other similar arrangement or hold the licence on trust for any person (except by reason only of joint legal ownership), or grant any right, lease or licence over the Property in favour of any third party.

8. REPAIRS, DECORATION, ALTERATIONS AND SIGNS

- 8.1 The Lessee shall keep the Property clean and tidy and shall make good any damage caused to the Property by any act or omission of the Lessee or any person under the control of the Lessee.
- 8.2 The Lessee shall not make any alteration to the Property, unless they have the consent in writing of the Lessor, and the appropriate permissions under the Faculty Jurisdiction, before any works are begun.
- 8.3 The Lessee may attach any sign, poster or advertisement to the Nursery Building so as to be seen from the Property and Churchyard, subject to appropriate consent being obtained from the Lessor, under the Faculty Jurisdiction and in accordance with the Town and Country Planning Act. Signage.
- 8.4 The Lessor may enter the Property to inspect its condition and may give the Lessee a notice of any breach of this Lease relating to the condition of the Property. The Lessee shall carry out and complete any works needed to remedy that breach within the time reasonably required by the Lessor, in default of which the Lessor may enter the Property and carry out the works needed. The costs incurred by the Lessor in carrying out any works pursuant to this clause (and any professional fees and any VAT in respect of those costs) shall be a debt due from the Lessee to the Lessor and payable on demand.

9. USE

- 9.1 The Lessee shall not use the Property for any purpose except the Permitted Use and shall not use the Property outside the reasonable hours for the operation of the Nursery and the Wrap Around provision.

- 9.2 The Lessee shall not use the Property or exercise any of the Rights:
- (a) for any illegal purpose; or
 - (b) for any purpose in a manner that would cause any loss, nuisance or inconvenience to the Lessor, the Churchyard or any owner or occupier of any other property; or
 - (c) in any way that would vitiate the Lessor's ownership of the Property or
 - (d) in a manner that would interfere with any right or permissions subject to which this Lease is granted.
- 9.3 The Lessee shall not overload any structural part of the Nursery Building nor any Service Media at or serving the Nursery Building in such a way as might cause damage, disruption or inconvenience to the Property.
- 9.4 The Lessee shall comply with all laws relating to:
- (a) the Property and the occupation and use of the Property by the Lessee;
 - (b) the use of all Service Media and machinery and equipment at or serving the Property; and
 - (c) all materials kept at or disposed from the Property.
- 9.5 The Lessee shall observe all regulations made from time to time by the Lessor in accordance with the principles of good estate management

10. END OF LEASE

- 10.1 At the end of the Lease, the Lessee shall vacate the Property, leaving it in the condition required by this Lease and shall remove from the Property all chattels belonging to or used by it.
- 10.2 The Lessee irrevocably appoints the Lessor to be the Lessee's agent to store or dispose of any chattels, fittings or items it has fixed to the Property and which have been left by the Lessee on the Property for more than ten working days after the end of the Term. The Lessor shall not be liable to the Lessee by reason of that storage or disposal. The Lessee shall indemnify the Lessor in respect of any claim made by a third party in relation to that storage or disposal.

11. INDEMNITY

The Lessee shall keep the Lessor indemnified against all liabilities, expenses, costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, damages and losses (including but not limited to any diminution in the value of the Lessor's interest in the Property and loss of amenity of the Property) suffered or incurred by the Lessor arising out of or in connection with any breach of this agreement or any act or omission of the lessee or any person on the Property Joint and several liability

- 11.1 Where the Lessee comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Lessee arising under this lease. The Lessee 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.
- 11.2 The obligations of the Lessee arising by virtue of this licence are owed to the Lessor and the obligations of the Lessor are owed to the Lessee.
- 11.3 The Lessor shall not be liable to the Lessee for any failure of the Lessor to perform any lessor covenant in this licence, unless and until the Lessee has given the Lessor notice of the failure and the Lessor has not remedied the failure within a reasonable time of service of that notice.

12. NOTICES

- 12.1 A notice given under or in connection with this licence shall be:
- (a) in writing unless this licence expressly states otherwise and for the purposes of this clause an e-mail is not in writing;
 - (b) given:
 - (i) by hand or by pre-paid first-class post or other next working day delivery service at the party's registered office address (if the party is a company) or (in any other case) at the party's principal place of business; or
 - (ii) by fax to the party's main fax number.
- 12.2 If a notice is given in accordance with clause 12.1, it shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting; or
 - (c) if sent by fax, at 9.00 am on the next working day after transmission.
- 12.3 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.
- 12.4 Within five working days after receipt of any notice or other communication affecting the Property or the Building the Licensee shall send a copy of the relevant document to the Licensor.

13. ENTIRE AGREEMENT

- 13.1 This licence constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to subject matter.
- 13.2 Each party acknowledges that in entering into this licence it does not rely on any representation or warranty (whether made innocently or negligently).
- 13.3 Nothing in this licence constitutes or shall constitute a representation or warranty that the Property may lawfully be used for any purpose allowed by this licence.
- 13.4 Nothing in this clause shall limit or exclude any liability for fraud.

14. GOVERNING LAW

This licence and any dispute or claim arising out of it 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.

15. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have 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), without prejudice to the parties rights to resolve disputes by other means including mediation or arbitration.

This document is signed on behalf of the Lessor by the Incumbent and the Incumbent and Churchwardens on behalf of the Parochial Church Council of St Mary's Todmorden with St Michael's Cornholme and

by THE HEADTEACHER AND CHAIR OF GOVERNORS of Todmorden Church of England Primary School and by representatives of Leeds Diocesan Board of Education, acting by Leeds Diocesan Board of Finance.

Executed as a deed by the representatives of the Parochial Church Council of St Mary's
Todmorden with St Michael's Cornholme,
c/o St Mary's Church, White Hart Fold, OL14 7BD

.....
Incumbent

.....
Churchwarden

.....
Churchwarden

Executed as a deed by

THE HEADTEACHER AND CHAIR OF GOVERNORS of Todmorden Church of England
Primary School and Leeds Diocesan Board of Education.

.....
Chair of Governors

.....
Head Teacher

.....
DBE acting by the DBF (signed)

ADDRESS: .