

Dated: 13 DECEMBER

2018

Between:

- (1) Tendring District Council
- (2) Verve Gain (Harwich) Limited
- (3) National Westminster Bank Plc

Section 106 agreement relating to land at
Williamsburg Avenue, Harwich, Essex CO12 4EN

This Agreement is made this 13 day of DECEMBER 2018

Between:

- (1) **TENDRING DISTRICT COUNCIL** of Council Office, Thorpe Road, Weeley, Clacton-on-Sea, Essex C016 9AJ (the "**Council**");
- (2) **VERVE GAIN (HARWICH) LIMITED** (Company registration number 10834145) whose registered office is situate at Bank House, 66 High Street, Dawley, Telford, United Kingdom, TF4 2HD (the "**Owner**"); and
- (3) **NATIONAL WESTMINSTER BANK PLC** (Company registration number 00929027) whose registered office is situate at 135 Bishopsgate, London EC2M 3UR (the "**Mortgagee**") and whose address for service is Credit Documentation, Po Box 339, Manchester M60 2AH

Whereas:

- (a) In respect of the area in which the Site is situate the Council is the local planning authority for the purposes of the 1990 Act and for enforcing the provisions of this Agreement.
- (b) The Owner is the freehold owner of the Site.
- (c) The Mortgagee is the holder of a legal charge dated 4 September 2018 over the Site.
- (d) The Owner has submitted the Application to the Council.
- (e) The Council is satisfied that the Planning Obligations are necessary to make the Development acceptable in planning terms, and are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.
- (f) The Council considers it in the interest of the proper planning of its area that provision should be made for regulating or facilitating the Development or use of the Site in the manner hereinafter appearing and is satisfied that Planning Permission for the Development should be granted subject to conditions and to the execution of this Agreement.
- (g) The Mortgagee consents to the giving by the Owner of the covenants in this Agreement and, subject to the provisions of this Agreement, agrees its interest in the Site is bound by them.
- (h) The Parties enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and, subject to the provisions of this Agreement, the Mortgagee.

2. Definitions and interpretation

2.1 In this Agreement (including the Recitals) where the context so requires or admits the following expressions shall have the following meanings

"1990 Act" means the Town and Country Planning Act 1990, as amended

“Administrative Monitoring Fee”	means the sum of one thousand pounds sterling (£1,000)
“Affordable Housing”	means housing that is made available to Persons in a Housing Need
“Application”	means the application for full planning permission allocated reference 17/01658/FUL and registered by the Council on 9 th October 2017
“Average Gross Disposal Price”	means the combined disposal price of the first forty (40) Residential Dwellings to be the subject of a Disposal less any Selling Costs divided by forty (40)
“Benchmark Figure”	means ten million one hundred and seventy eight thousand four hundred and twenty five pounds sterling (£10,178,425)
“Commencement of the Development”	means the implementation of the Planning Permission by the carrying out on the Site of a material operation described in section 56 of the 1990 Act and the expression “ <i>Commence the Development</i> ” shall <i>mutatis mutandis</i> be construed accordingly provided that for the purposes of this Agreement a material operation shall not be taken to include demolition or site clearance, site survey, investigation, preparation, or demolition, the laying out of removal of services or the erection of fences or hoardings
“Development”	means the provision of thirty-two (32) houses and eighteen (18) flats and associated works at the Site
“Disposal”	means the disposal of any Residential Dwelling on the Site to an arms' length third party by the sale of a freehold interest (in any house or block of flats) or the granting of a lease (in any individual flat) and the expressions “ <i>Dispose</i> ’ ‘ <i>Disposes</i> ’ and “ <i>Disposed</i> ” shall be construed accordingly

“Final Affordable Housing Contribution”	means fifty per cent (50%) of the amount by which the Final Total Sales Figure exceeds the Benchmark Figure
“Final Total Sales Figure”	means the combined disposal price of all fifty (50) Residential Dwellings less any Selling Costs
“Housing Needs Register”	means the registers maintained by the Council or a Registered Provider of persons with an identified need for housing in the District of Tendring
“Interim Affordable Housing Contribution”	means fifty per cent (50%) of the amount by which the Interim Total Sales Figure exceeds the Benchmark Figure
“Interim Total Sales Figure”	means the Average Gross Disposal Price multiplied by fifty (50)
“Notice of Commencement”	means notice in writing to advise of the expected date of Commencement of the Development
“Occupation”	means occupation of a Residential Dwelling for the purposes permitted by the Planning Permission and shall not include day time occupation by workmen involved in the construction of the Development or insofar as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes, for uses as temporary office, or for the storage of plant and materials, and the expressions “ <i>Occupy</i> ” and “ <i>Occupied</i> ” shall <i>mutatis mutandis</i> be construed accordingly
“Open Space”	means the land forming part of the Site to be dedicated as public open space to be used for recreational and amenity purposes by all members of the public, and which land is shown for identification purposes edged in red on the Open Space Plan
“Open Space Contribution”	means the commuted sum in the amount of Fifty Thousand Pounds (£50,000) to be to be paid by the Owner to the Council towards the maintenance by the Council of the Open Space

"Open Space Plan"	means the drawing contained in Annexure 3
"Open Space Works"	means the works necessary for the laying out of the Open Space to enable the same to be used for recreational and amenity purposes by all members of the public
"Open Space Works Specification"	means a specification for the laying out, planting and profiling of the Open Space to enable the land to be used for recreational and amenity uses by all members of the public
"Parties"	means the parties to this Agreement and the expression " <i>Party</i> " shall be construed accordingly
"Person in a Housing Need"	means a person registered on the Housing Needs Register and the use in this Agreement of the term "Persons in a Housing Need" shall be construed accordingly
"Planning Obligations"	means those obligations on the part of the Owner set out in the Schedule
"Planning Permission"	means the conditional planning permission for the Development to be granted pursuant to the Application the form of which is contained in Annexure 1 or if the Council agrees in writing another planning permission for the Development granted pursuant to Section 73 of the 1990 Act or a replacement permission for the Development
"Registered Provider"	means a registered provider of social housing pursuant to section 80 of the Housing and Regeneration Act 2008
"Residential Dwellings"	means the residential dwellings permitted to be constructed by the Planning Permission and the expression " <i>Residential Dwelling</i> " shall be construed accordingly
"Sales Information"	means evidence of a binding agreement for the sale price in relation to each Residential Dwelling and information relating to any Selling Costs

"Selling Costs"	means all costs reasonably incurred by the Owner in selling a Residential Dwelling including legal, marketing and other professional costs and any financial incentives which may include financial contributions towards legal and stamp duty costs
"Site"	means the land at Williamsburg Avenue, Harwich, Essex CO12 4EN contained in title number EX932237 as the same is shown for the purposes of identification only edged in red on the Site Plan
"Site Plan"	means the drawing contained in Annexure 2
"Working Days"	means any day (other than a Saturday or Sunday) on which Barclays Bank plc is open in the City of London for normal banking business and the expression " <i>Working Day</i> " shall be construed accordingly

- 2.2 The expressions the "*Council*", the "*Owner*", and the "*Mortgagee*" shall include their respective successors-in-title and assigns and the persons claiming title under or through them.
- 2.3 Words importing the singular number only shall include the plural number and *vice versa* and words importing any particular gender shall include all other genders.
- 2.4 Reference in this Agreement to any clause, sub-clause, Schedule, or Annexure without further designation shall (unless the context otherwise requires) be a reference to the clause, or sub-clause, or Schedule, or Annexure to this Agreement so numbered.
- 2.5 Clause, paragraph, Schedule and Appendix headings, and the front cover to this Agreement are for convenience only and have no legal effect whatsoever.
- 2.6 Any obligation in this Agreement by the Owner not to do any act or thing shall be deemed to include an obligation not to suffer such act or thing to be done and to use reasonable endeavours to prevent such act or thing being done by another person and words denoting an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause, permit, or allow infringement of the restriction.
- 2.7 Unless otherwise specified where any agreement, certificate, consent, permission, expression of satisfaction or other approval is to be given by any Party or any person on behalf of any Party the same shall not be unreasonably withheld or delayed but may only be given in writing and may be validly obtained only prior to the act or event to which it applies.

- 2.8 This Agreement shall cease to have effect (in so far as it has not already been complied with) if the Planning Permission is quashed, revoked, or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to Commencement of Development but without prejudice to the rights of any Party against the other.
- 2.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement save that this Agreement shall, subject to written confirmation of the Council to be given prior to the determination of any subsequent planning application that may follow, apply to any application to vary or renew the Planning Permission provided that such application relates substantially to the same development of the Site as is proposed under the Planning Permission.
- 2.10 Any reference to an Act of Parliament shall include any amendment, modification, extension, or re-enactment thereof for the time being in force and shall include all instruments, orders, plans, regulations, permissions, and directions for the time being made, issued, or given thereunder or deriving validity therefrom.

3. Statutory powers

- 3.1 This Agreement is made pursuant to all powers enabling the Parties and in particular section 106 of the 1990 Act to the intent that it shall bind the Site into whosoever hands the same may come and the Owner and Mortgagee.
- 3.2 The provisions contained in the Schedule create planning obligations for the purposes of section 106 of the 1990 Act which shall be enforceable by the Council.

4. Operative Date

- 4.1 This Agreement shall (save for **clause 4.3**) become operative upon the date of the grant of the Planning Permission.
- 4.2 The Planning Obligations shall not be enforceable by the Council until the grant of the Planning Permission.
- 4.3 The Council shall within five (5) Working Days of the date of this Agreement grant the Planning Permission.

5. Owner covenants

The Owner hereby covenants with the Council:

- 5.1 to comply with the Planning Obligations;
- 5.2 to serve Notice of Commencement on the Council not less than ten (10) Working Days before it is intended to Commence the Development;
- 5.3 to serve notice in writing on the Council not less than ten (10) Working Days before the intended first Occupation of a Residential Dwelling; to serve notice in writing on the Council not more than ten (10) Working Days after the Disposal of the thirty-ninth (39th) Residential Dwelling and the forty-ninth (49th) Residential Dwelling; and

- 5.4 to serve notice in writing on the Council not less than twenty (20) Working Days before the Owner disposes of all or any part of the Site giving the name and address of the person to whom the land has been transferred, save and excluding the purchasers of completed Residential Dwellings.

6. Council covenants

The Council hereby covenants with the Owner:

- 6.1 to comply with the obligations imposed upon it in the Schedule; and
- 6.2 at any time after the fulfilment of the obligation herein contained (or each of them if more than one) the Council will upon written request of the Owner issue a certificate confirming compliance with and fulfilment of the obligation and make a note of the same on the Register of Local Land Charges.

7. Acknowledgements

- 7.1 No compensation shall be payable by the Council to the Owner arising from the terms of this Agreement unless specified otherwise in this Agreement.
- 7.2 Representatives of the Council may enter upon the Site (save and excluding any Residential Dwellings that are Occupied) at any reasonable time to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with subject to complying with all reasonable health and safety requirements of the Owner.
- 7.3 Nothing in this Agreement shall prejudice or affect the rights, powers, duties, and obligations of the Council:
- 7.3.1 in the exercise of its functions in any capacity (including in particular the capacity as the planning authority); and
- 7.3.2 under private, or public, or subordinate legislation which may be effectively exercised by it as if it was not a Party (and in particular it shall not be precluded from entering into any agreement under the 1990 Act with any third party and it shall not be deemed to be in breach of this Agreement by so doing).
- 7.4 Any agreement, obligation, covenant, or undertaking contained herein by any of the Parties which comprise more than one person shall be joint and several and where any agreement, obligation, covenant, or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 7.5 If any provision of the Agreement is declared void, voidable, illegal, or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality provided that any Party may seek the consent of the others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the Parties.
- 7.6 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution, or approval of

the purchaser, tenant, or residential occupier of any Residential Dwelling or their mortgagee shall not be required to release and/or vary any part of this Agreement.

- 7.7 The failure by any Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.
- 7.8 This Agreement shall be enforceable as a local land charge and shall be registered immediately as such.
- 7.9 All works and/or acts required to be undertaken by any Party or as incidental to this Agreement shall in all respects be at the cost of that Party.
- 7.10 For the avoidance of doubt:
- 7.10.1 no person shall be liable for any breach of the Planning Obligations occurring after it has parted with all of its interest in the Site or the part in respect of which such breach occurs without prejudice to the Council's continuing ability to enforce this Agreement and the Planning Obligations against the Site and any successor-in-title or assign from time-to-time save that any person who Disposes of all or a part of its interest in the Site shall not be released from its obligations in respect of any antecedent breach and any mortgagee of the Site shall not be bound by the provisions of this Agreement unless and until such mortgagee has entered into possession of the Site; and
- 7.10.2 subject to the provisions of clause 7.11 none of the provisions of this Agreement apply to the individual owners and occupiers of Residential Dwellings nor against statutory undertakers providing services to the Site.
- 7.11 All legal interests in the last Residential Dwelling to be Occupied and the freehold interest in the whole of the Development shall continue to be bound by the terms and conditions of this Agreement until such time as the Interim Affordable Housing Contribution has been deposited with the Council regardless of whether or not in the case of the last Residential Dwelling it has been Occupied or purchased in good faith and at arms' length by a residential occupier.
- 7.12 This Agreement constitutes a deed.
- 7.13 The applicable law for this Agreement shall be English law.
- 7.14 Whenever there is a dispute relating to this Agreement which is not resolved within twenty (20) Working Days of any Party having notified the other that such dispute exists any Party shall have the right to refer the same to the decision of an independent expert (to act as an expert and not as an arbitrator in the absence of contrary agreement by the Parties in dispute) with relevant professional expertise and agreed between the Parties in dispute or (in the absence of such agreement) to be appointed by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the Parties in dispute); such expert shall be required to give each

disputing Party the opportunity to make written representations to them and to comment on the representations of one another, and they shall be required to deliver their decision in writing and supported by reasons within thirty (30) Working Days of their appointment; their decision shall be binding on the Parties save in the case of manifest error; and the Parties shall bear the expert's fees in equal shares unless they are awarded differently by the expert

7.15 Nothing in this Agreement shall fetter or restrict the objective consideration by the Council of the Application or any other application for planning permission.

7.16 It is not intended that any third party shall have the right to enforce the terms of this Agreement pursuant to the Contracts (rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit and nor shall any third party have the right of veto over any future variation of this Agreement.

8. Notices

8.1 The address for the service of any notice or other written communication shall be as specified above in the case of each Party or (at the option of the recipient) such address as may be specified for service from time-to-time provided that the same is within the United Kingdom or (at the option of the Party giving notice or other communication) the last known place of abode or business in the United Kingdom.

8.2 Any notice or other written communication to be served or given by one Party upon, or to, any other under the provisions of this Agreement shall be deemed to have been validly served, or given, if delivered by hand, or sent by recorded delivery post to the Party upon whom it is to be served, or to whom it is to be given, or as otherwise notified, for the purpose by notice in writing provided that the notice or other written communication is marked as follows for each recipient:

8.2.1 for the Council at its address specified above marked for the attention of the Development Manager Ref 17/01658/FUL;

8.2.2 for the Owner at its address specified above; and

8.2.3 for the Mortgagee at its address specified above.

8.3 Any notice, or other written communication, to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council or by a duly authorised officer or signatory.

9. Costs of this Agreement

The Owner agrees to pay to the Council:

9.1 upon completion of this Agreement its reasonable and proper legal costs of two thousand five hundred pounds sterling (£2,500) (without VAT) in connection with the preparation, negotiation, and completion of this Agreement; and

9.2 within twenty (20) Working Days of Commencement of the Development the Administrative Monitoring Fee.

10. Mortgagee consent

The Mortgagee acknowledges and declares that:

- 10.1 this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the Planning Obligations contained in this Agreement; and
- 10.2 that the security of its charge in relation to the Site shall take effect subject to this Agreement,

PROVIDED THAT the Mortgagee shall not have any liability under this Agreement unless it takes possession of the Site in which case it, or (as the case maybe) they, too will be bound by the Planning Obligations as if it was a person deriving title from the Owner.

11. Execution

Executed as a deed in the manner hereinafter appearing but not delivered until the day and year first before written.

The Schedule

Part A: Affordable Housing Review

1. The Owner covenants with the Council that
 - 1.1 Prior to completion of the Disposal of the forty fifth (45th) Residential Dwelling it will provide to the Council:
 - 1.1.1 the Sales Information;
 - 1.1.2 a calculation to show the Interim Total Sales Figure; and
 - 1.1.3 a calculation to show the amount of the Interim Affordable Housing Contribution to be paid to the Council;
 - 1.2 If (pursuant to **paragraph 2.1.2**) the Council notifies the Owner of an Alternative Interim Affordable Housing Contribution then the Owner shall notify the Council within thirty (30) Working Days of receipt of the Alternative Interim Affordable Housing Contribution as to whether or not such Alternative Interim Affordable Housing Contribution is accepted.
 - 1.3 In the event that the Alternative Interim Affordable Housing Contribution is not accepted by the Owner then it shall provide in writing its reasons to the Council and thereafter they shall work collaboratively and reasonably to agree an acceptable position as soon as possible and failing any agreement within thirty (30) Working Days the dispute shall be resolved under the procedure set out in **clause 7.14**.
 - 1.4 Not to Dispose, or allow, or permit the Disposal of more than forty nine (49) Residential Dwellings prior to paying the Interim Affordable Housing Contribution or the Alternative Interim Affordable Housing Contribution (whichever shall apply) to the Council provided always that in the event that the Parties agree that the Interim Total Sales Figure does not exceed the Benchmark Figure then the Interim Affordable Housing Contribution shall be nil.
 - 1.5 On completion of the Disposal of the fiftieth (50th) Residential Dwelling to provide the Final Total Sales Figure and calculation to show the amount of the Final Affordable Housing Contribution to be paid to the Council.
 - 1.6 If the Council notifies the Owner of an Alternative Final Affordable Housing Contribution pursuant to **paragraph 2.2.2** then the Owner shall within thirty (30) Working Days of receipt of the same notify the Council in writing as to whether the same is accepted or not.
 - 1.7 In the event that the Alternative Final Affordable Housing Contribution is not accepted by the Owner then it shall provide written reasons to the Council and thereafter the Parties shall work collaboratively and reasonably to agree an acceptable position as soon as possible and if no agreement is reached within twenty (20) Working Days the dispute shall be resolved under the procedure set out in **clause 7.14**.

1.8 In the event that the Final Affordable Housing Contribution or the Alternative Final Affordable Housing Contribution (whichever shall apply) is greater than the Interim Affordable Housing Contribution or the Alternative Interim Affordable Housing Contribution (whichever has been paid to the Council) then the Owner shall pay the difference to the Council within ten (10) Working Days of being sent a written request for payment from the Council.

1.9 In the event that:

1.9.1 if, the Final Affordable Housing Contribution or the Alternative Final Affordable Housing Contribution (whichever shall apply) is less than the Interim Affordable Housing Contribution or the Alternative Interim Affordable Housing Contribution (whichever has been paid to the Council) then the Council shall repay the difference to the Owner within ten (10) Working Days of being sent a written request for repayment from the Owner; and

1.9.2 if, the Final Total Sales Figure is equal to or less than the Benchmark Figure then, for the avoidance of doubt, the Owner shall not be obliged to pay any monies to the Council as a contribution towards Affordable Housing.

2. The Council covenants with the Owner as follows:

2.1 Within thirty (30) Working Days of the Council receiving the Interim Total Sales Figure and the calculation to show the Interim Affordable Housing Contribution pursuant to **paragraphs 1.1.2 and 1.1.3** the Council shall, either:

2.1.1 notify the Owner in writing of its approval to the Interim Total Sales Figure and the Interim Affordable Housing Contribution; or

2.1.2 write to the Owner stating why it does not agree with the same and set out an alternative proposal in respect of the Interim Affordable Housing Contribution (the "**Alternative Interim Affordable Housing Contribution**"),

provided always that if the Council does not notify the Owner within thirty (30) Working Days or does not so write (time being of the essence) it shall be deemed that the Council has approved the Interim Total Sales Figure and the Interim Affordable Housing Contribution as submitted.

2.2 Within thirty (30) Working Days of receipt of the Final Total Sales Figure and the calculation to show the amount of the Final Affordable Housing Contribution pursuant to **paragraph 1.5** the Council shall, either:

2.2.1 notify the Owner in writing of its approval of the Final Total Sales Figure and the Final Affordable Housing Contribution; or

2.2.2 write to the Owner stating why it does not agree with the same and set out an alternative proposal in respect of the Final Affordable Housing Contribution ("**Alternative Final Affordable Housing Contribution**"),

provided always that if the Council does not so notify the Owner within the thirty (30) Working Days or does not so write (time being of the essence) then

it shall be deemed that the Council has approved the Final Total Sales Figure and the Final Affordable Housing Contribution.

- 2.3 to provide a written form of receipt for payment by the Owner of the Interim Affordable Housing Contribution (if paid) or the Alternative Interim Affordable Housing Contribution (if paid) and the Final Affordable Housing Contribution (if paid) or the Alternative Affordable Housing Contribution (if paid) on receipt of the said contributions and further to place the said contributions when received from the Owner into an interest bearing account with a clearing bank and to utilise the same solely for the provision of Affordable Housing in the District of Tendring; and
- 2.4 within forty (40) Working Days of the receipt of a request in writing from the Owner to be made no earlier than seven (7) years from the anniversary of the date that the Council received the Final Affordable Housing Contribution or the Alternative Final Affordable Housing Contribution (whichever shall apply) to return to the Owner any unused part of the Final Affordable Housing Contribution or the Alternative Final Affordable Housing Contribution (plus interest accrued on that unused part) provided that if such a request has not been served on the Council within one (1) year of the seventh (7th) anniversary of the date of the receipt of the Final Affordable Housing Contribution or the Alternative Final Affordable Housing Contribution by the Council, the Council may retain the same solely for the provision of Affordable Housing in the District of Tendring.

Part B: Open Space

1. Not to Commence the Development unless and until the Open Space Works Specification has been submitted to the Council for approval
2. Not to Occupy (or allow, cause or permit the Occupation of) and of the Residential Dwellings unless and until the Council has approved the Open Space Works Specification in writing
3. Not to Occupy (or allow, cause or permit the Occupation of) more than twenty-six (26) Residential Dwellings unless and until the Owner has:
 - (a) Provided the Open Space by the carrying out of the Open Space Works in accordance with the Open Space Works Specification to the reasonable satisfaction of the Council;
 - (b) Transferred the Open Space to the Council for the nominal consideration of one pound (£1.00) whereupon the said Open Space shall thereafter be maintained by the Council; and
 - (c) Paid the Open Space Contribution to the Council
4. The Council shall accept the transfer of the Open Space from the Owner referred to in paragraph 3(b) herein as soon as reasonably practicable and from that time shall maintain the Open Space in perpetuity
5. The Council shall use the Open Space Contribution solely towards the maintenance of the Open Space

Annexure 1
Planning Permission



TENDRING DISTRICT COUNCIL

Planning Services

Council Offices, Thorpe Road, Weeley, Clacton-on-Sea, Essex CO16 9AJ

AGENT: Luke Raistrick - MRPP
21 Buckingham Street
London
WC2N 6EF

APPLICANT: Verve Gain (Hawrich) Ltd
C/o Agent

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO: 17/01658/FUL

DATE REGISTERED: 9th October 2017

Proposed Development and Location of the Land:

**32 No. houses and 18 No. flats (C3 use class) with associated works.
Land North of Williamsburg Avenue Harwich Essex CO12 4EN**

THE TENDRING DISTRICT COUNCIL AS LOCAL PLANNING AUTHORITY **HEREBY GRANT PLANNING PERMISSION** in accordance with the application form, supporting documents and plans submitted, subject to the following conditions;

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following submitted plans:

- AL(00)102
- AL(00)104
- AL(00)106
- AL(00)109
- AL(00)110
- AL(00)111
- AL(00)112
- AL(00)202
- AL(00)203
- AL(00)204
- AL(00)205
- AL(00)206
- AL(00)209
- AL(00)210
- SK005
- SK007
- AL(00)004 O
- AL(00)112 - Plot 23
- AL(00)209 - Plot 23
- SK004 A
- SK006 A

- AL(00)103A
- AL(00)105 A

Reason - For the avoidance of doubt and in the interests of proper planning.

- 3 Notwithstanding the submitted details, no installation of external materials until full details or samples of the external facing, roofing materials, rainwater goods and details of the colours to be used/applied in construction have been submitted to and agreed, in writing, by the Local Planning Authority. Such materials/colours as may be agreed shall be those used in the development unless otherwise agreed, in writing, at a later date with the Local Planning Authority.

Reason - To preserve and enhance the character of the site and setting of the surrounding area.

- 4 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be agreed prior to occupation and carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. The agreed scheme shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837:2012 Trees in relation to design, demolition and construction." Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - In the interest of visual amenity and the character of the area.

- 5 All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.

Reason - In the interest of visual amenity and the character of the area.

- 6 Each proposed residential unit shall not be occupied until such time as its respective vehicle parking area, as indicated on the approved plans, including any parking spaces for the mobility impaired, have been hard surfaced, sealed and marked out in parking bays. The vehicle parking area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority."

Reason - To ensure that on street parking of vehicles in the adjoining streets does not occur in the interests of highway safety and that appropriate parking is provided.

- 7 The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) prepared by Canham

Consulting referenced 209896-B Revision 3 and dated 8 May 2018 and the following mitigation measures detailed within the FRA:

- Finished ground floor levels are set no lower than 2.525m above Ordnance Datum (AOD);
- Flood Resilient Construction measures outlined at section 6.6; and
- Areas of safe refuge for the ground floor flats on higher floors as shown on the approved plans.

The mitigation measures shall be fully implemented prior to occupation and retain as approved.

Reason - To reduce the impact of flooding on the proposed development and future occupants.

- 8 Prior to installation precise details of the provision, siting, design and materials of screen walls and fences have been submitted to and approved in writing by the Local Planning Authority. The approved screen walls and fences shall be erected prior to the dwellings to which they relate being first occupied and thereafter be retained in the approved form.

Reason - In the interests of visual amenity and to safeguard future resident's privacy.

- 9 No development shall commence until the protected species mitigation measures as outlined in the submitted Updated Phase 1 Habitat Survey (prepared by James Blake Associates - September 2017) and the subsequent Reptile Mitigation Plan Revision C01 (as prepared by MLM Group - dated 13/06/2018) have been put in place. The measures as agreed shall be retained throughout the duration of building and engineering works.

Reason - To safeguard those protected species using the site.

- 10 No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site employees and visitors
- ii. loading and unloading of plant and materials (including details of a turning facility suitable for the largest vehicle attracted to or generated by the sites activities).
- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding
- v. wheel washing facilities
- vi. the construction hours

Reason - In the interests of public amenity and highway safety.

- 11 Prior to its installation a surface water drainage strategy has been submitted to and approved in writing by the Local Planning Authority. No hard standing areas shall be constructed and no dwellings shall be occupied until the works have been carried out in accordance with the surface water strategy so approved.

Reason - To prevent environmental and amenity problems arising from flooding.

- 12 There shall be no tree planting or any other planting in perpetuity, within the 6 metres which make up the 3 metre wide footpath/cycleway and additional 3 metres hardened maintenance/construction track alongside, located within the open space.

Reason - To ensure access to the footpath/cycleway is maintained in perpetuity, in the interests of highway safety.

- 13 The proposed access to the footpath sited in between the proposed visitor's spaces (as illustrated on approved plan AL(00)004 Rev O shall be retained in perpetuity.

Reason - To ensure access to the footpath/cycleway is maintained in perpetuity, in the interests of highway safety.

- 14 Prior to the first occupation of the dwellings the proposed footpath/cycleway shall be provided, in accordance with block plan AL(00)004 O, and retained in perpetuity thereafter.

Reason - To allow a pedestrian connection through to the commercial uses to the north of the site.

- 15 No unbound material shall be used in the surface finish of a driveway within 6 metres of the existing or proposed highway boundary.

Reason - To avoid displacement of loose material onto the highway in the interests of highway safety.

- 16 All new driveways and parking areas shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling.

Reason - In the interests of sustainable development and to ensure that run-off water is avoided to minimise the risk of surface water flooding.

- 17 Prior to first occupation of the proposed development, the communal recycling/bin/refuse collection points, as shown on the approved block plan no. AL(00)004 O, shall be provided and retained thereafter.

Reason - To minimise the length of time a refuse vehicle is required to wait within and cause obstruction of the highway, in the interests of highway safety.

- 18 Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), there shall be no additions to the dwellings, nor shall any buildings, enclosures, swimming or other pool be erected except in accordance with drawings showing the design and siting of such additions or building(s) which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason - It is necessary for the Local Planning Authority to be able to consider and control further development in order to ensure that adequate usable private amenity space is retained on the plots and in the interests of neighbouring resident's amenity.

DATED:

SIGNED:



Catherine Bicknell
Head of Planning

IMPORTANT INFORMATION :-

The local planning authority considers that the following policies and proposals in the development plan are relevant to the above decision:

NPPF National Planning Policy Framework July 2018

National Planning Practice Guidance

Tendring District Local Plan 2007

QL1 Spatial Strategy

QL2 Promoting Transport Choice

QL3 Minimising and Managing Flood Risk

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

QL12 Planning Obligations

HG1 Housing Provision

HG3 Residential Development Within Defined Settlements

HG3A Mixed Communities

HG6 Dwelling Size and Type

HG7 Residential Densities

HG9 Private Amenity Space

COM2 Community Safety

COM6 Provision of Recreational Open Space for New Residential Development

COM21 Light Pollution

COM23 General Pollution

COM29 Utilities

COM31A Sewerage and Sewage Disposal

EN1 Landscape Character

EN6 Biodiversity

EN6A Protected Species

TR1A Development Affecting Highways

TR3A Provision for Walking

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

SPL1 Managing Growth

SPL2 Settlement Development Boundaries

SPL3 Sustainable Design

HP4 Safeguarded Local Greenspace

LP1 Housing Supply

LP2 Housing Choice

LP3 Housing Density and Standards

LP4 Housing Layout

LP5 Affordable and Council Housing

PPL1 Development and Flood Risk

PPL4 Biodiversity and Geodiversity

PPL5 Water Conservation, Drainage and Sewerage

CP1 Sustainable Transport and Accessibility

CP3 Improving the Telecommunications Network

Local Planning Guidance

Essex County Council Car Parking Standards - Design and Good Practice

Essex Design Guide

Standard Informative 1: The Provisions of the Essex Act 1987, Section 13 (Access for the Fire Brigade) may apply to this Development and will be determined at Building Regulation Stage.

Standard Informative 2: You are reminded that the carrying out of building works requires approval under the Building Regulations in many cases as well as a grant of planning permission. If you are in doubt as to whether or not the work, the subject of this planning permission, requires such approval, then you are invited to contact the Building Control section at Tendring District Council.

Standard Informative 3: If the development includes the construction of a new building on or at the boundary of 2 properties, work to an existing party wall or party structure or involve

17/01658/FUL

excavation near to and below the foundation level of neighbouring buildings, you are advised that the provisions of the Party Wall Act 1996 may apply to this development. An explanatory booklet concerning the implications of this Act is available online or from the District Council.

The attached notes explain the rights of appeal.

NOTES FOR GUIDANCE

WHEN PLANNING PERMISSION IS REFUSED OR GRANTED SUBJECT TO CONDITIONS

APPEALS TO THE SECRETARY OF STATE

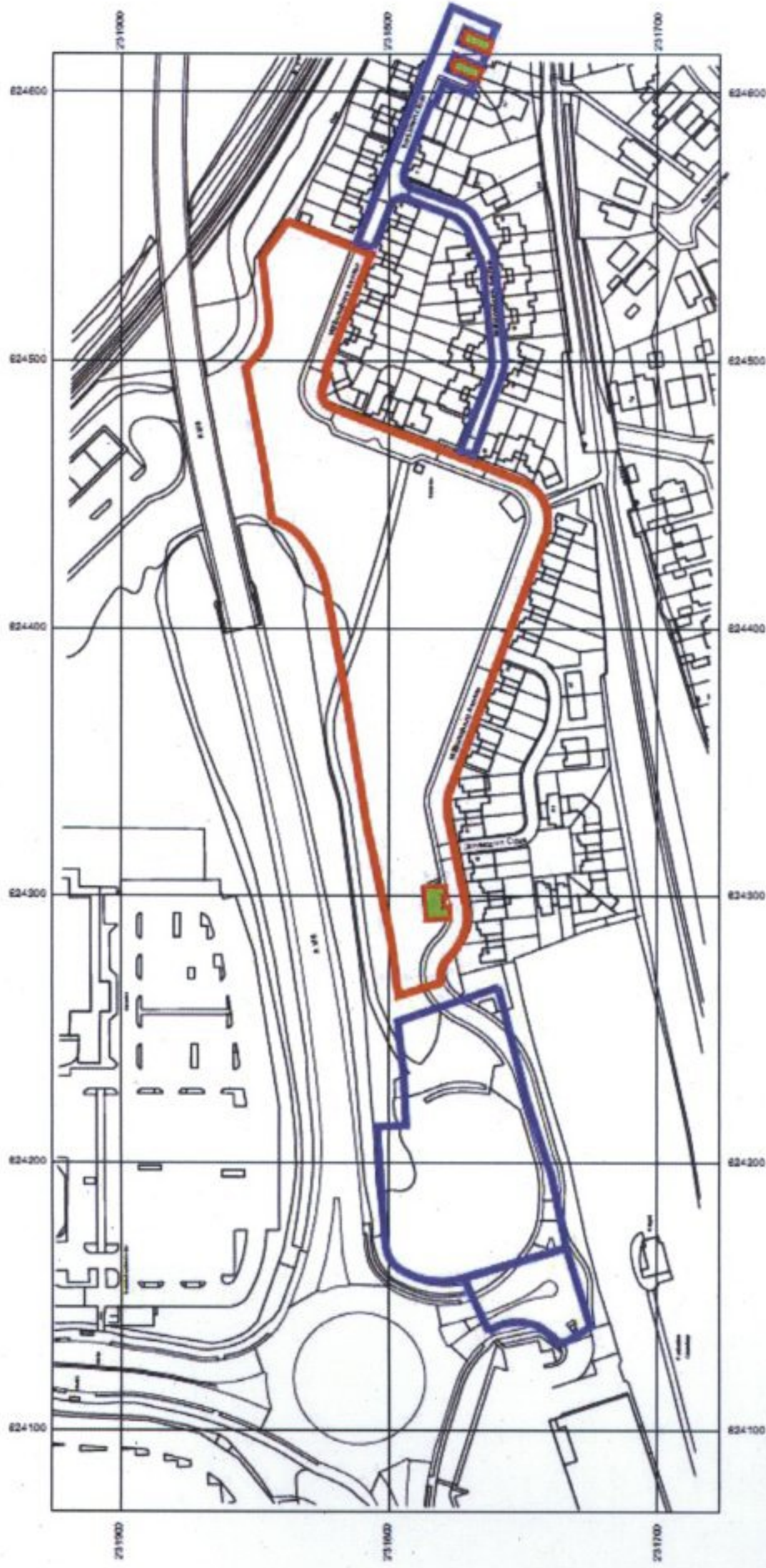
- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within the set time frame as outlined below:
 - a. If this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Householder Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - b. If this is a decision to refuse planning permission for a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within **12 weeks** of the date of this notice. A **Planning Appeal Form** is required, available online at <https://www.gov.uk/planning-inspectorate>
 - c. If you want to appeal against your local planning authority's decision on a development which is not caught by a. and b. above then you must do so within **6 months** of the date of this notice. A **Planning Appeal Form** is required, available online <https://www.gov.uk/planning-inspectorate>
- Appeals must be made using the relevant form (as detailed above) which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. **Please note, only the applicant possesses the right of appeal.**
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission for the proposed development or could not have granted it without the conditions imposed having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based its decision on a direction given by the Secretary of State.

ENFORCEMENT

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months (12 weeks in the case of a householder or minor commercial appeal) of the date of this notice, whichever period expires earlier.

Annexure 2

Site Plan



- Site Boundary
- Client Owned Land
- Land Outwith Client Ownership

Do not scale from this drawing. If in doubt, ask.
 This drawing is the property of maith design and must
 not be reproduced or used in any way without the
 written permission of maith design.

Do not scale from this drawing. If in doubt, ask.
 This drawing is the property of maith design and must
 not be reproduced or used in any way without the
 written permission of maith design.

used without written permission.

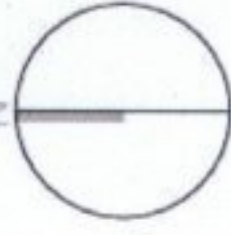
previous revisions
 revision: first issue

by: date: 2017.09.22

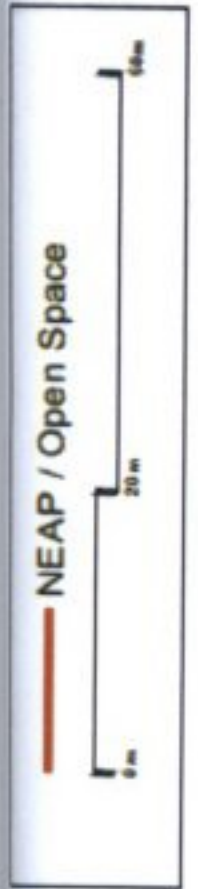
suite 324/325
 baltic chambers
 50 wellington street
 glasgow g2 6hj
 0141 348 7700
 office@maithdesign.com
 www.maithdesign.com



project: Harwich Residential
 client: Verve Harwich
 drawing: Location Plan
 scale @ A3: 1:2500
 dwg number: AL(00)001
 revision: AL(00)001
 date: 2017.09.22
 status: planning



Annexure 3
Open Space Plan



Alpaka

Do not scale from this drawing. If in doubt, call.
This drawing is the property of mathdesign and must not be copied, reproduced or disclosed without written permission.



- previous revisions
- First issue
 - A NEAP zone updated
 - B Cycle path removed

by:
AG 20.09.2018
AG 10.11.2018
AG 10.11.2018

date:
20.09.2018
10.11.2018
10.11.2018

suite 324/325
baltic chambers
50 wellington street
glasgow g2 6lj
0141 348 7700
office@mathdesign.com
www.mathdesign.com

MATH
DESIGN LTD

project Harwich Residential
client Verve Harwich
drawing Open Space Plan / NEAP
scale @ A3 1:750
dwg number AL(00)005
revision B
date 28.11.2018
status planning

EXECUTED AS A DEED by
affixing the common seal of
TENDRING DISTRICT COUNCIL
in the presence of:

)
)
)
)



Authorised signatory:

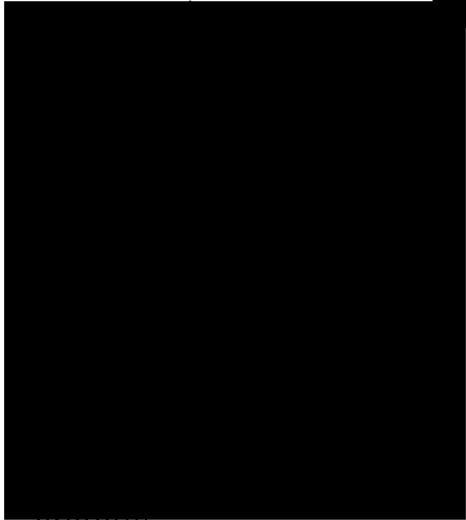
EXECUTED AS A DEED by
VERVE GAIN (HARWICH) LIMITED
acting by:

)
)
)



Director:

In the presence of:



Witness occupation

EXECUTED AS A DEED by
NATIONAL WESTMINSTER BANK PLC
acting by:

)
)
)

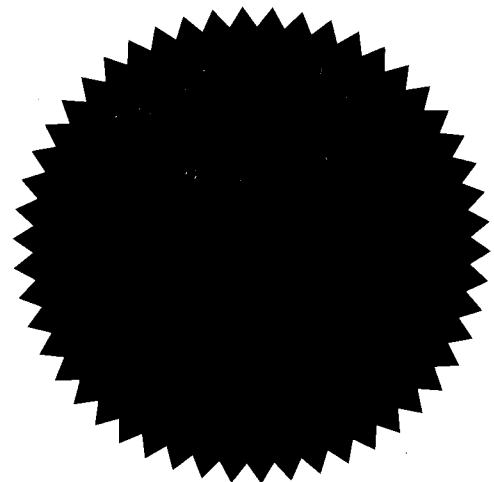


Director:

Secretary:

EXECUTED AS A DEED by)
affixing the common seal of)
TENDRING DISTRICT COUNCIL)
in the presence of:)

Authorised signatory: [Redacted]



SEAL REGISTER
17728
NUMBER

EXECUTED AS A DEED by)
VERVE GAIN (HARWICH) LIMITED)
acting by:)

Director:)
Secretary:)

EXECUTED AS A DEED by)
NATIONAL WESTMINSTER BANK PLC)
acting by:)

Director:)
Secretary:)

Signed and Delivered as a Deed
For and on behalf of
National Westminster Bank Plc
By a duly authorised Attorney

In the presence of [Redacted]

[Redacted]

Witness' Signature - Bank employee

