

DATED

7<sup>th</sup> October

2019

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**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106  
OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND AT SACKETTS  
GROVE HOLIDAY PARK, JAYWICK LANE, CLACTON-ON-SEA, ESSEX, CO16 7BJ**

**BETWEEN**

**TINGDENE PARKS LIMITED**

**OWNER**

**And**

**NATIONAL WESTMINSTER BANK PLC**

**MORTGAGEE**

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THIS DEED is dated 7<sup>th</sup> October 2019

- (1) **TINGDENE PARKS LIMITED** incorporated and registered in England and Wales with company number 3971993 whose registered office is at Bradfield Road, Finedon Road Industrial Estate, Wellingborough NN8 4HB (**the Owner**)
- (2) **NATIONAL WESTMINSTER BANK PLC** incorporated and registered in England and Wales with company number 929027 whose registered office is at 250 Bishopsgate, London EC2M 4AA and whose address for service is Credit Documentation, PO Box 339, Manchester M60 2AH (**the Mortgagee**)

To

**TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton on Sea, Essex CO15 1SE (**the Council**)

**BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated and the authority by whom the obligations in this Deed are enforceable
- (B) The Owner owns the Property subject to a mortgage in favour of the Mortgagee
- (C) The Owner has made the Planning Application and is proposing to carry out the Development
- (D) The Owner intends to develop the Property pursuant to the Planning Permission should the Appeal be allowed
- (E) The Mortgagee is the registered proprietor of the charge dated 31 January 2014 referred to in entry number 1 of the charges register of Title Number EX471362 and in entry number 1 of the charges register of Title Number EX474766 and has agreed to enter into this deed to give its consent to the terms of the unilateral undertaking on the part of the Owner as set out in this Deed
- (F) The Appeal has been lodged by the Owner with the Secretary of State pursuant to Section 78 of the TCPA 1990 against the Council's decision on 9 October 2018 to refuse planning permission for the Development
- (G) The Appeal will be considered by an Inspector appointed by the Secretary of State and in the event that the Inspector or the Secretary of State decides to uphold the appeal the Owner undertakes that the

planning obligations set out in this Deed shall encumber the Property and comprise a reason for the Planning Permission to be granted for the Development

- (H) This Deed is entered into for the purposes of providing planning obligations binding the estate and interest of the Owner in the Site under Section 106 of the TCPA 1990 in the event that Planning Permission is issued that the Owner undertakes to perform

## **AGREED TERMS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this Deed

#### **1.1 Definitions:**

**Affordable Housing Contribution:** means the sum of £2,967.08 (Two Thousand, Nine Hundred and Sixty-Seven Pounds and Eight Pence) per Caravan Index Linked towards the mitigation of the impact of the Development by facilitating the off-site provision of affordable housing in accordance with Policy HG4 of the Tendring District Local Plan

**Age Restriction:** no Caravan shall be occupied by any persons aged below 50 years of age save for a resident carer of such age-compliant person or persons whose residence is additionally necessary on medical and/or social-care grounds confirmed by a relevant professionally qualified practitioner

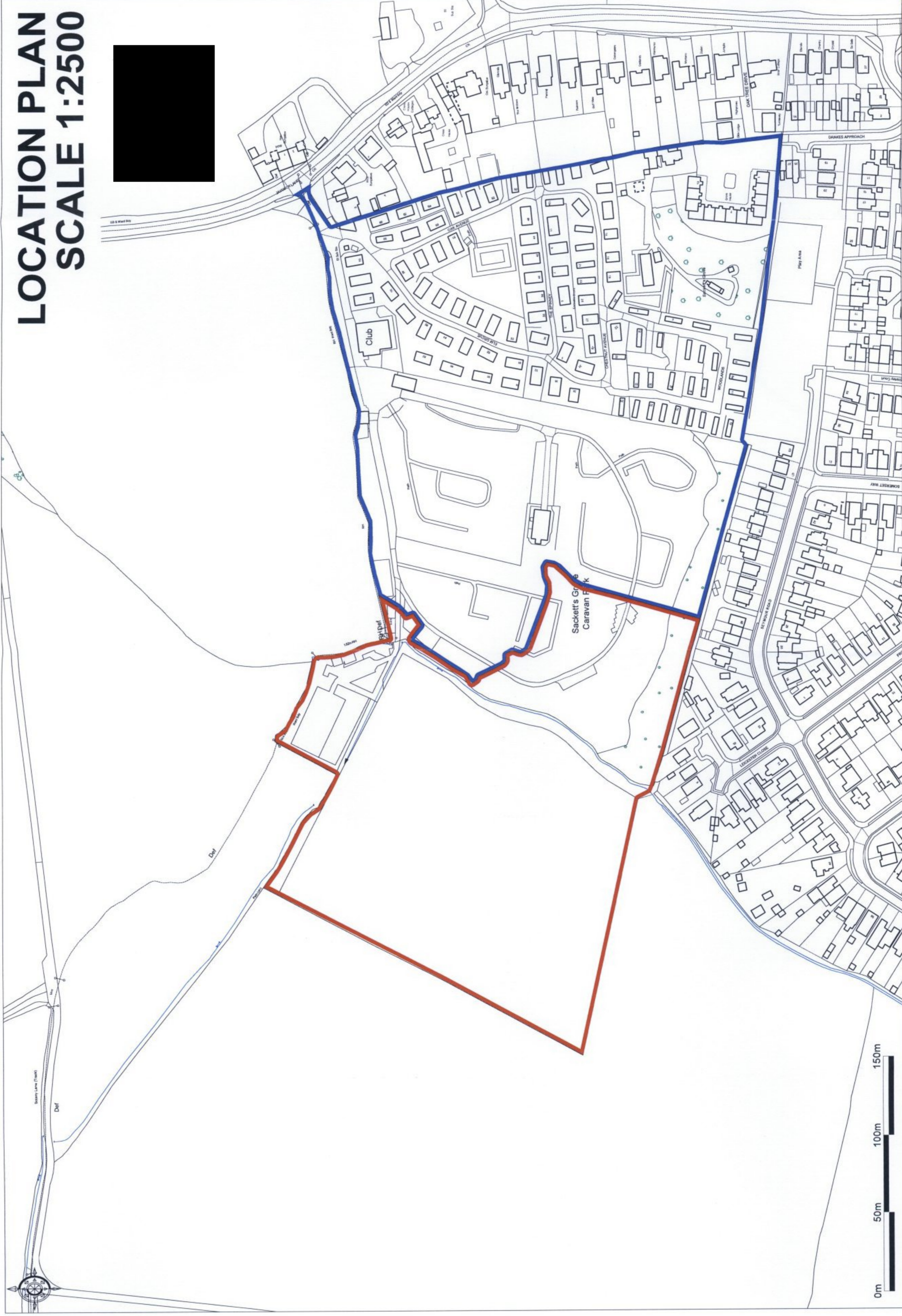
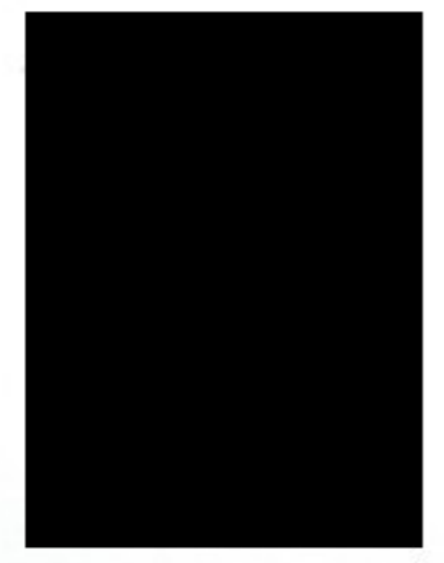
**Appeal:** means the appeal lodged with the Secretary of State pursuant to Section 78 of the TCPA 1990 under reference number APP/P1560/W/19/3226280 against refusal of the Council to grant planning permission for the Development

**Base Rate:** the higher of 4% and the base rate from time to time of Bank of England Bank plc.

**Caravans:** means the static caravans or park homes permitted to be stationed upon the Property and occupied for primary residential purposes pursuant to the Planning Permission

**Commencement of Development:** the material change in use resulting from the Development in accordance with section 56(1)(b) of the TCPA 1990 or the carrying out in relation to the Development of any relevant material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property

# LOCATION PLAN SCALE 1:2500



**SACKETT'S GROVE CARAVAN PARK**  
**JAYWICK LANE**  
**CLACTON-ON-SEA**

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**Commenced** and **Commences** shall be construed accordingly

**Commencement Date:** the date of Commencement of Development

**Default Interest Rate:** 4% per annum above the Base Rate

**Development:** the development of the Property described in the Planning Application

**European Wildlife Sites:** means the Special Protection Area and Ramsar Site at the Colne Estuary, and the Essex Estuaries Special Area of Conservation, designated primarily to protect birdlife comprising waders and wildfowl

**Healthcare Contribution:** means the sum of £236.54 (Two Hundred and Thirty-Six Pounds and Fifty-Four Pence) per Caravan Index Linked towards improvements to capacity for the Green Elms Health Centre

**Index Linked:** means increased in accordance with the following formula:

Amount payable = the subject financial contribution x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this Deed

**Open Space and Play Contribution:** means the sum of £1,690.00 (One Thousand Six Hundred and Ninety Pounds) per Caravan Index Linked towards improvements to the public open space and play area at Rush Green Recreation Ground

**Plan:** the plan attached to this Deed

**Property:** the freehold land at Sacketts Grove Holiday Park, Jaywick Lane, Clacton on Sea, Essex shown edged red on the Plan and registered at HM Land Registry with absolute title under title numbers EX741362 and EX474766

**Planning Application:** an application for planning permission made under section 73 of the TCPA 1990 registered by the Council on 29 November 2017 under reference number 17/02055/FUL to vary conditions 1, 2, 3, 4, 5, 6, 9 and 10 of planning permission 16/00675 to allow the use of the Property for the siting and residential occupation of 104 park homes on the footprint of 116 static holiday caravans authorised by that permission

**Planning Permission:** the planning permission to be granted by the Secretary of State or his Inspector in respect of the Planning Application and in response to the Appeal should it be allowed

**Recreational Disturbance, Avoidance and Mitigation Contribution:** means the sum of £122.30 (One Hundred and Twenty-Two Pounds

and Thirty Pence) per Caravan Index Linked towards the mitigation of the impact of the Development on the European Wildlife Sites

**TCPA 1990:** Town and Country Planning Act 1990 as amended

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

- 1.2 Clause headings shall not affect the interpretation of this Deed
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural, and in the plural shall include the singular
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns
- 1.7 A reference to the Council shall include the successors to its respective statutory functions
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail save only as provided by clause 12.4
- 1.11 References to clauses are to the clauses of this Deed
- 1.12 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 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually

## **2. STATUTORY PROVISIONS**

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, and any other enabling powers
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by it in the Property and its respective successors and assigns
- 2.3 This Deed shall come into effect on the date of grant of the Planning Permission
- 2.4 The obligations contained in clause 3 of this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

## **3. COVENANTS WITH THE COUNCIL**

The Owner undertakes and covenants with the Council:

- (a) to pay the Open Space and Play, Recreational Disturbance, Avoidance and Mitigation, and Healthcare Contributions to the Council on or before the Commencement Date
- (b) to pay one half of the Affordable Housing Contribution to the Council on or before the siting and occupation of the Thirty-Fifth (35<sup>th</sup>) Caravan
- (c) to pay the remaining half of the Affordable Housing Contribution to the Council on or before the siting and occupation of the Seventy-First (71<sup>st</sup>) Caravan
- (d) to give at least Ten (10) Working Days written notice to the Council of the Commencement Date
- (e) that no Caravan shall be occupied in breach of the Age Restriction and the site rules adopted following the Development being licensed in accordance with the requirements of the Caravan Sites and Control of Development Act 1960 shall reflect and be consistent with the Age Restriction



**4. INDEXATION OF CONTRIBUTIONS**

4.1 All financial contributions payable to the Council shall be Index Linked

4.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing

**5. MORTGAGEE'S CONSENT**

5.1 The Mortgagee consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a local land charge prior to the creation of the Mortgagee's interest in the Property

5.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property

**6. RELEASE**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this Deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest

**7. DETERMINATION OF DEED**

This Deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

**8. LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council.

**9. INTEREST ON LATE PAYMENT**

If any financial contribution due under this Deed has not been paid to the Council prior to or on the provided date for payment relevant to that contribution, the Owner shall pay the Council interest on the outstanding contribution at the Default Interest Rate (both before and after any judgment) and such interest shall accrue on a daily basis for the period from the provided date for payment relevant to that contribution to and including the date when payment occurs

**10. COUNCIL'S COSTS**

The Owner shall pay to the Council on the date of this Deed:

- (a) the Council's reasonable and proper legal costs of £500 together with all disbursements incurred in connection with the consultation upon, approval, receipt, and registration of this Deed
- (b) the sum of £300.00 as a contribution towards the Council's costs of monitoring the implementation and performance of the obligations created by this Deed

**11. OWNERSHIP**

11.1 The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Property

11.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within ten (10) Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of

**12. NOTICES**

12.1 A notice or other communication to be given under or in connection with this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first-class post or other next working day delivery service

12.2 Any notice or other communication to be given under this Deed must be sent to the relevant party as follows:

- (a) to the Council at: Council Offices, Thorpe Road, Weeley, Clacton on Sea, Essex CO16 9AJ marked for the attention of Catherine Bicknell, Head of Planning;
- (b) to the Owner at: Bradfield Road, Finedon Road Industrial Estate, Wellingborough NN8 4HB marked for the attention of Gary Duthie, Planning Lawyer;
- (c) to the Mortgagee at: Credit Documentation Department, 8<sup>th</sup> Floor, 1 Hardman Boulevard, Manchester M3 3AQ marked for the attention of the Securities Manager;

or as otherwise specified by the relevant person by notice in writing to each other person

12.3 Any notice or other communication given in accordance with clause 12.1 and clause 12.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (b) if sent by pre-paid first-class post or other next working day delivery service at 9.00 am on the second Working Day after posting

12.4 A notice or other communication given under this Deed shall not be validly given if sent by e-mail unless the recipient specifically confirms after receipt that email delivery shall suffice for that particular notice or communication

12.5 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

### **13. THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

**14. GOVERNING LAW**

This Deed 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 applicable law of England and Wales

This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it

Executed as a deed by  
TINGDENE PARKS LIMITED  
acting by MATTHEW CHARLES  
GIBBARD, a director, in the

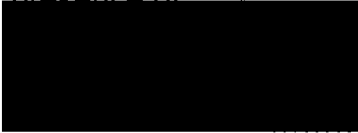


SIGNATURE, NAME,  
ADDRESS AND OCCUPATION  
OF WITNESS

.....  
Director

A black rectangular redaction box covering the signature of the director.

Signed and Delivered as a deed  
for and on behalf of NATIONAL  
WESTMINSTER BANK PLC by  
a duly authorised Attorney in the  
presence of:



Witness Signature  
Bank Employee

.....  
Attorn

A black rectangular redaction box covering the signature of the attorney.