

HOWARD KENNEDY

Dated

2024

TENDRING DISTRICT COUNCIL

- and -

MATTHEW HOMES LIMITED

LICENCE

- relating to -

**permitting hoarding to be erected and maintained on Land
adjoining Brook Park West, Hartley Brook Road, Clacton-on-
Sea, CO16 9FZ**

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THIS LICENCE is dated

2024

PARTIES

- (1) **TENDRING DISTRICT COUNCIL** whose principal address is at Town Hall, Station Rd, Clacton-on-Sea CO15 1SE (the "**Council**"); and
- (2) **MATTHEW HOMES LIMITED** (company number: 01210027) whose registered office is at Pendragon House, 65 London Road, St. Albans, AL1 1LJ (the "**Licensee**").

BACKGROUND

- (A) The Licensee has erected the Hoarding on the land of which the Council's Property forms part and the Hoarding therefore encroaches onto the Council's Property.
- (B) In connection with the works, the Licensee has requested to maintain the Hoarding.
- (C) The Council has agreed, on the terms and subject to the conditions in this licence, to allow the Licensee to maintain the Hoarding.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions

" Adjoining Property "	the land known as land adjoining Brook Park West, Hartley Brook Road, Clacton-On-Sea CO16 9FZ registered at the Land Registry under title number AA34108, excluding the Council's Property.
" Business Day "	a day, other than a Sunday or public holiday in England, when banks in London are open for business.
" CDM Regulations "	the Construction (Design and Management) Regulations 2015 (SI 2015/51).
" Competent Authority "	any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.
" Council's Property "	the freehold property known as Pickers Ditch Land forming part of the land adjoining Brook Park West, Hartley Brook Road, Clacton-On-Sea CO16 9FZ, shown edged red on the Plan.
" Hoarding "	the hoarding erected on the Council's Property by the Licensee, as shown by the yellow line between the points marked A to B on the Plan annexed to this Licence.
" Hoarding Licence Period "	the periods beginning on and including the date of this Licence to and including The Hoarding Termination date.
" Hoarding Termination Date "	the earliest of:

- (a) 31 December 2026 ;
- (b) the date when the Hoarding is dismantled and removed from the Council's Property; and
- (c) the date this licence is terminated in accordance with Clause 9.

"Necessary Consents"

all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the erection, use, maintenance, inspection, transportation, dismantling and removal of the Hoarding.

"Plan"

the plan attached to this licence at Appendix 1.

- 1.2 **Termination Notice:** written notice served by the Council on the Licensee to terminate this licence in accordance with Clause 9. Clause, appendix and paragraph headings shall not affect the interpretation of this licence.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The annexes form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the annexes.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This licence shall be binding on, and ensure to the benefit of, the parties to this licence and their respective personal representatives, successors and permitted assigns, and references to any party or person shall include that party's or person's personal representatives, successors or permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** does not include fax.
- 1.12 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

- 1.13 A reference to this licence or to any other licence, agreement or document referred to in this licence is a reference to this licence or such other licence, agreement or document as varied or novated (in each case, other than in breach of the provisions of this licence) from time to time.
- 1.14 References to clauses and annexes are to the clauses and annexes of this licence and references to paragraphs are to paragraphs of the relevant annex.
- 1.15 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.
- 1.16 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. LICENCE

- 2.1 In consideration of the obligations on the Licensee contained in this licence the Council grants a licence to the Licensee, its sub-contractors and employees to erect, maintain, use, dismantle and remove the Hoarding during the Hoarding Licence Period only on the Council's Property (but not further or otherwise) upon the terms of this Licence.
- 2.2 The rights granted by Clause 2.1 of this Licence may only be exercised by the Licensee, its sub-contractors and employees:
- 2.2.1 subject always to all Necessary Consents;
 - 2.2.2 during the Hoarding Licence Period;
 - 2.2.3 in respect of the Hoarding within the part of the Council's Property as shown by a yellow line on the Plan; and
 - 2.2.4 for the sole purpose of security, and facilitating the carrying out and safe completion of the construction work along the boundary

3. LICENCE PERIOD

This licence will terminate on the Hoarding Termination Date.

4. LICENSEE'S OBLIGATIONS

The Licensee covenants with the Council to comply with its obligations set out in this Licence.

5. LICENSEE'S OBLIGATIONS

5.1 Hoarding

- 5.1.1 The Licensee shall use reasonable endeavours to ensure that during the Hoarding Licence Period and until the Hoarding is removed from the Council's Property:
- (a) the Hoarding is erected and kept in good and substantial repair and condition
 - (b) the Hoarding is regularly inspected
- 5.1.2 The Licensee shall not display advertising on the Hoarding save as agreed by the Council in advance

- 5.1.3 The Licensee shall maintain public liability insurance in relation to the hoarding and any activity by the Licensee, contractors or agents on the Licensors Property enclosed by the hoarding for the duration of the Hoarding License Period.
- 5.1.4 The Licensee shall ensure that the Hoarding is, dismantled and removed from the Council's Property and the area made good prior to the Hoarding Termination Date.

5.2 **General**

The Licensee covenants with the Council to permit the Council at all reasonable times and on reasonable prior written notice to enter upon the Council's Property containing the Hoarding to ascertain whether the provisions of this licence are being fully observed and performed PROVIDED THAT the Council and its consultants and workmen shall comply with all reasonable requirements of the Licensee and its contractors during such time.

6. **HEALTH AND SAFETY**

The Licensee shall comply with its obligations under the Health and Safety at Work etc. Act 1974 and the CDM Regulations to the extent they apply to the works.

7. **INSURANCE**

- 7.1 The parties acknowledge that the Council need not maintain insurance in relation to the Hoarding and that the erection, presence, use, maintenance, dismantling and removal of the Hoarding is at the entire cost and risk of the Licensee.

8. **COMPLETION OF THE WORKS**

- 8.1 The Licensee shall give to the Council not less than five Business Days' notice in writing of the date on which it intends to dismantle the Hoarding
- 8.2 The Licensee shall dismantle and remove the Hoarding from the Council's Property and remove any other plant, machinery or equipment placed on the Council's Property prior to the expiry of the Hoarding Licence Period and in accordance with Clause 5.1.4.

9. **TERMINATION**

- 9.1 The Council may serve a Termination Notice on the Licensee if any of the following events occur:
 - 9.1.1 the Licensee commits any material breach of this licence which is not capable of remedy and compensation for any losses suffered by the Council as a result of that breach are inadequate given the nature and extent of that breach; or
 - 9.1.2 the Licensee commits any breach of this licence which is capable of remedy and the Licensee fails to remedy the breach within a reasonable period after receiving a notice or otherwise from the Council to the Licensee requiring the Licensee to remedy the same.
- 9.2 Service of a Termination Notice shall terminate the Licensee's rights under this licence with immediate effect but shall be without prejudice to:
 - 9.2.1 any antecedent breach of this licence by the Licensee and any right or remedy of the Council arising from such a breach; and
 - 9.2.2 the ongoing obligations of the Licensee in relation to the dismantling, and removal of the Hoarding.

10. AGREEMENTS AND DECLARATIONS

Provided always it is hereby agreed and declared that:

- 10.1 Nothing herein contained shall be deemed to give to the Licensee a right of lateral or subjacent support for the works or render the Council liable for any damage which may happen to the same
- 10.2 Nothing herein contained shall be deemed to give the Licensee any estate right or interest in the air space above the Council's Property except as is necessary for the exercise of this Licence
- 10.3 Nothing herein contained shall prejudice or affect any provision for the protection of the Council included in any special act or order nor prejudice the statutory rights or powers of the Council.
- 10.4 In case of default by the Licensee in respect of any of the provisions of this Licence the Council without prejudice to any right or remedy shall be entitled themselves to carry out the works from time to time required to be carried out by the Licensee in compliance therewith and to make good any damage to the property of the Council caused by so doing and to carry out works which in the opinion of the Council's engineer are necessary to safeguard or secure the Council's Property or any other property of the Council against any damage or interference caused or apprehended by reason of any such default on the part of the Licensee.

11. COUNCIL'S LIABILITY

- 11.1 The grant of this Licence by the Council is without any liability on the part of the Council in relation to or arising from the erection, presence, use, maintenance, dismantling, transport and removal of the Hoarding and any such grant or approval shall not limit exclude or modify the duties and liabilities of the Licensee under this Licence or under the requirements of any Competent Authority or otherwise.
- 11.2 Nothing in Clause 11.1 limits any liability which cannot legally be limited, including liability for:
 - 11.2.1 death or personal injury caused by negligence; and
 - 11.2.2 fraud or fraudulent misrepresentation.

12. NO EXCLUSIVE POSSESSION

- 12.1 For the avoidance of doubt, the parties to this Licence acknowledge that at no time during the Hoarding Licence Period will the Licensee enjoy the right to exclusive possession of the area on which the Hoarding is erected and that this Licence confers no rights of light or air or any easement whatsoever.

Nothing in this licence implies a warranty that the Council's Property may be used, or are fit, for any purpose.

13. NOTICES

- 13.1 A notice given to a party under or in connection with this licence:
 - 13.1.1 shall be in writing and in English;
 - 13.1.2 shall be sent to the party for the attention of the contact and at the address or email address, listed in Clause 13.2, or such other address or email address as that party may notify in accordance with Clause 13.3;
 - 13.1.3 may be sent by a method listed in Clause 13.4; and

- 13.1.4 unless proved otherwise is deemed received as set out in Clause 13.4 if prepared and sent in accordance with this Clause.
- 13.2 The addresses and e-mail addresses for service of notices are:
- 13.2.1 Council- Tendring District Council at Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE from time to time marked for the attention of Saira Mahboob with a copy sent to Legal.admin@tendringdc.gov.uk or such other email address as the Council shall nominate in writing;
- 13.2.2 Licensee – Matthew Homes Limited at Pendragon House, 65 London Road, St.Albans, AL1 1LJ marked for the attention of Paritosh Job with a copy sent to paritosh@matthew-homes.com or such other email address as the Licensee shall nominate in writing.
- 13.3 A party may change its details given in Clause 13.2 by giving notice, the change taking effect for the party notified of the change at 9:00 am on the later of:
- 13.3.1 the date, if any, specified in the notice as the effective date for the change; or
- 13.3.2 the date five Business Days after deemed receipt of the notice.
- 13.4 This Clause 13.4 sets out the delivery methods for sending a notice to a party under this agreement and, for each delivery method, the date and time when the notice is deemed to have been received (provided that all other requirements of this Clause have been satisfied and subject to the provisions in Clause 13.5):
- 13.4.1 if delivered by hand, on signature of a delivery receipt; or
- 13.4.2 if sent by email, at the time of transmission;
- 13.4.3 if sent by pre-paid first class post or other next Business Day delivery service providing proof of delivery at 9:00am on the second Business Day after posting or at the time recorded by the delivery service.
- 13.5 If deemed receipt under Clause 13.4 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this Clause 13.5, business hours means 9:00am to 5:00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 13.6 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.
14. **RIGHTS OF THIRD PARTIES**
- 14.1 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.
- 14.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.
15. **INTEREST**
- 15.1 If a party fails to make any payment due to any other party under this licence by the due date, then, without limiting the other party's remedies under Clause 9, the defaulting party shall pay interest on the overdue amount sum from the due date until payment of the overdue sum, whether before or after judgment.

15.2 Interest under this Clause 15 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

16. **GOVERNING LAW**

This licence 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.

17. **JURISDICTION**

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 licence or its subject matter or formation.

THIS LICENCE has been entered into on the date stated at the beginning of it.

EXECUTED as a **DEED** by)
MATTHEW HOMES LIMITED)
acting by)
a director, in the presence of:)
Signature of Director

Signature

Name

Address

.....

Occupation

THE COMMON SEAL OF TENDRING DISTRICT COUNCIL

was affixed in the presence of:

.....

Authorised Signatory

APPENDIX 1

THE PLAN

