



MARLBOROUGH ROAD PUBLIC TOILETS

TOWN COUNCIL MEETING

REPORT 89/17

13 NOVEMBER 2017

The purpose of this paper is to ask Members to consider and agree a lease for the Town Council's management of the Marlborough Road Public Toilets.

No. DETAIL

1) BACKGROUND

- a) The Isle of Wight Council approved the freehold transfer of the Marlborough Road Public Toilets along with those on the Esplanade and in Ventnor Park to the Town Council with effect from 1 April 2016.
- b) The freehold transfers of the Eastern Esplanade and Ventnor Park Public Toilets have been completed but those at 1 Marlborough Road are being managed by the Town Council on the basis of a Tenancy at Will.
- c) The delay in moving to a more substantial legal basis is the consequence of complications for the legal transfer of the fact that these toilets are part of a terrace and the site includes a flat directly above them leaving the Town Council with the options of either proceeding with the freehold transfer including the flat or to accept a long term lease of them.
- d) The Town Council meeting of 10 April, in Minute 29/17, authorised the Clerk to refer the matter to the Town Council's Solicitor for advice on the relative merits and risks of each of the two options.
- e) The consequent advice from Glanvilles was set out in Report 36/17 to the Town Council meeting of 22 May 2017 and consisted of clear guidance to take the long lease route.
- f) That Meeting resolved in Minute 48/17 to refer the progression of a lease to its Assets & Services Working Group and to report back in due course.

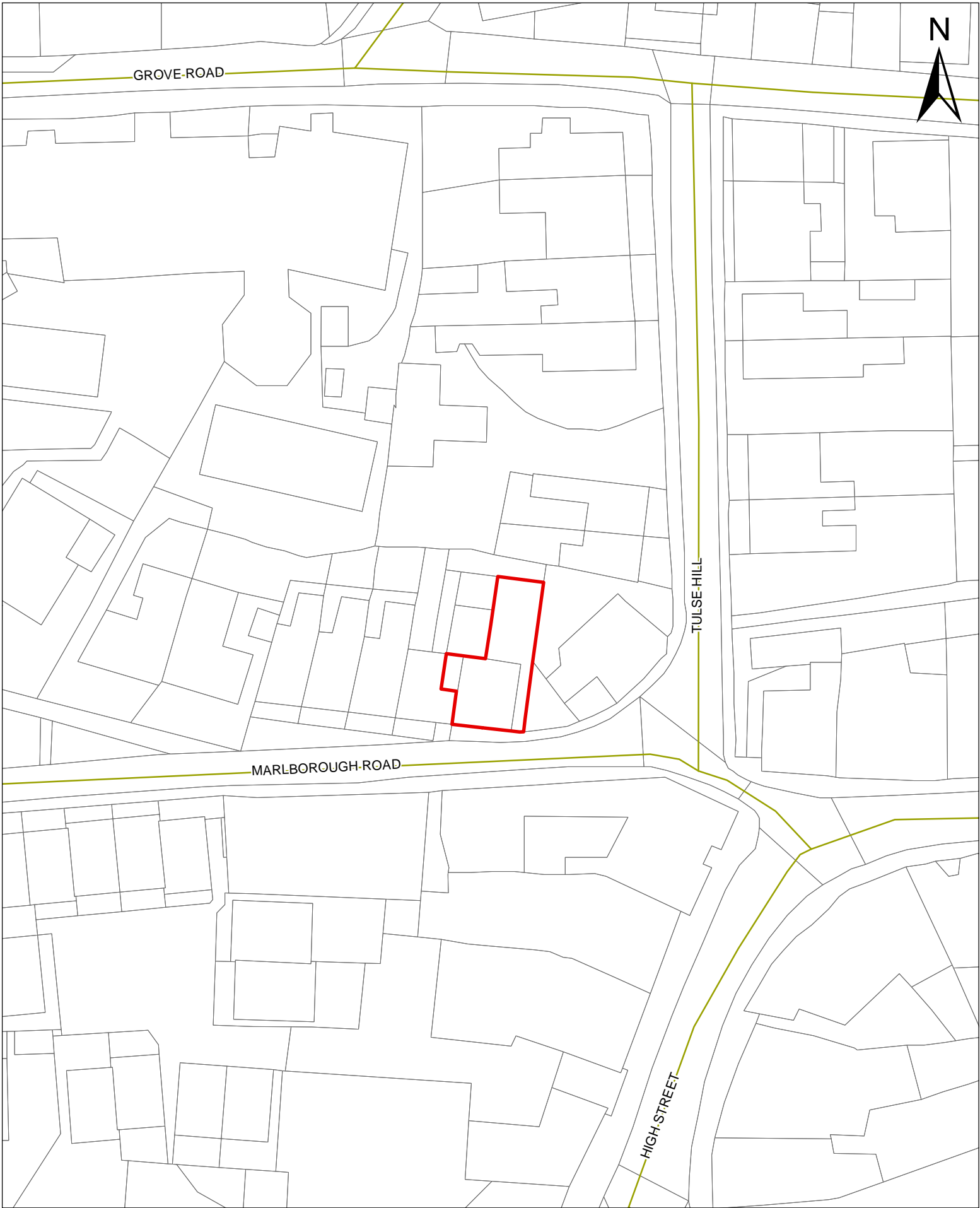
2) THE LEASE

- a) A draft lease for a term of 125 years was received from the Isle of Wight Council on 21 September and considered by the Assets & Services Group meetings of 28 September and 10 October.
- b) The Group decided to ask the Isle of Wight Council for clarification on:
 - o The definition of 'Property' to exclude that part of the ground floor that is the entrance to the flat above.
 - o Whether this definition excludes the Town Council from responsibility for the roof of the property?
 - o Are the responsibilities defined in clause 21 confined the toilet area of the property?
- c) A revised version of the lease was received from the Isle of Wight Council on 6 November and considered by the Assets & Services Working Group the following day.
- d) The Group found the responses to all three matters raised about the Draft to be satisfactory and therefore unanimously recommends that the Town Council formally agrees the lease as attached to this Report.

3) RECOMMENDATION

Members are recommended to authorise the signature of the lease attached to this Report as the basis for the Town Council's ongoing management of the facility.

Marlborough Road Toilets, Ventnor [Scale 1:500 @ A4]



Dated

2017

**ISLE OF WIGHT COUNCIL
and
VENTNOR TOWN COUNCIL**

LEASE

relating to

Public Conveniences at Marlborough Road, Ventnor, Isle of Wight



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PRESCRIBED CLAUSES

LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

IW70554

LR2.2 Other title numbers

None

LR3. Parties to this Lease

Landlord

ISLE OF WIGHT COUNCIL

COUNTY HALL, HIGH STREET, NEWPORT, ISLE OF WIGHT, PO30 1UD

Tenant

VENTNOR TOWN COUNCIL

1 SALISBURY GARDENS, DUDLEY ROAD, VENTNOR, ISLE OF WIGHT, PO38
1EJ

Other parties

None

LR4. Property

In the case of a conflict between this clause and the remainder of this Lease then, for the purposes of registration, this clause shall prevail

See the definition of "Property" in clause 1.1 of this Lease.

LR5. Prescribed statements etc

LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003

None

LR5.2 This Lease is made under, or by reference to, provisions of:

None

LR6. Term for which the Property is leased

The term as specified in this Lease at clause 1.1 in the definition of "Contractual Term"

LR7. Premium

None

LR8. Prohibitions or restrictions on disposing of this Lease

This Lease contains a provision that prohibits or restricts dispositions

LR9. Rights of acquisition etc

LR9.1 Tenant's contractual rights to renew this Lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None

LR9.2 Tenant's covenant to (or offer to) surrender this Lease

None

LR9.3 Landlord's contractual rights to acquire this Lease

None

LR10. Restrictive covenants given in this Lease by the Landlord in respect of land other than the Property

None

LR11. Easements

LR11.1 Easements granted by this Lease for the benefit of the Property

The easements as specified in clause 3 of this Lease

LR11.2 Easements granted or reserved by this Lease over the Property for the benefit of other property

The easements as specified in clause 4 of this Lease

LR12. Estate rentcharge burdening the Property

None

LR13. Application for standard form of restriction

None

LR14. Declaration of trust where there is more than one person comprising the Tenant

NOT APPLICABLE

BETWEEN

- ## AGREED TERMS

1.1 Definitions:

The paragraphs above shall apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships

Order 1994 (*SI 1994/2421*) (as amended), and a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (*SI 2001/1090*) (as amended)

Act of Insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a tenant or guarantor incorporated or domiciled in such relevant jurisdiction

‘Annual Rent’; rent at an initial rate of £1.00 per annum if demanded

‘Building’; the ground floor public conveniences and the first floor flat known as 1 Marlborough Road

‘Contractual Term’; a term of 125 years beginning on, and including the date of this Lease

‘CDM Regulations’; the Construction (Design and Management) Regulations 2007 (*SI 2007/320*)

‘Default Interest Rate’; 4 % per annum above the Interest Rate

‘Insurance Rent’; the aggregate in each year of:

(a) one half of the gross cost of the premium before any discount or commission for the insurance of the Property, other than any plate glass, for its full reinstatement cost (taking inflation of building costs into account) against loss or damage by or in consequence of the Insured Risks, including costs of demolition, site clearance, site protection and shoring-up, professionals’ and statutory fees and incidental expenses, the cost of any work which may be required under any law and VAT in respect of all those costs, fees and expenses; and

(b) any insurance premium tax payable on the above

‘Insured Risks’; means fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, impact by aircraft and articles dropped from them, impact by vehicles, riot, civil commotion and any other risks against which the Landlord decides to insure against from time to time and **Insured Risk** means any one of the Insured Risks

‘Interest Rate’; the base rate from time to time of National Westminster Bank PLC, or if that base rate stops being used or published then a comparable commercial rate reasonably determined by the Landlord

‘Landlord’s Neighbouring Property’; each and every part of the adjoining and neighbouring property in which the Landlord has an interest registered at HM Land Registry with title number IW70554

‘LTA 1954’; Landlord and Tenant Act 1954

‘Permitted Use’; Public Conveniences only

‘Property’; the ground floor only of the land and buildings known as Public Conveniences at Marlborough Road, Ventnor, Isle of Wight shown edged red on the attached plan including the foundations but excluding the roof

‘Rent Commencement Date’; the date of this lease

‘Rent Payment Dates’; 1 April in each year

‘Reservations’; all of the rights excepted, reserved and granted to the Landlord by this Lease

‘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

‘Third Party Rights’; all rights, covenants and restrictions affecting the Property including the matters referred to at the date of this Lease in the property register and any entries in the charges register of IW70554

‘VAT’; value added tax chargeable under the VATA 1994 and any similar replacement tax and any similar additional tax

‘VATA 1994’; Value Added Tax Act 1994

- 1.2 A reference to this **lease**, except a reference to the date of this Lease or to the grant of the lease, is a reference to this deed and any deed, licence, consent, approval or other instrument supplemental to it
- 1.3 A reference to the **Landlord** includes a reference to the person entitled to the immediate reversion to this Lease. A reference to the **Tenant** includes a reference to its successors in title and assigns. A reference to a **guarantor** is to any guarantor of the tenant covenants of this Lease including a guarantor who has entered into an authorised guarantee agreement
- 1.4 In relation to any payment, a reference to a **fair proportion** is to a fair proportion of the total amount payable, determined conclusively (except as to questions of law) by the Landlord
- 1.5 The expressions **landlord covenant** and **tenant covenant** each has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995
- 1.6 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it
- 1.7 A reference to the **term** is to the Contractual Term
- 1.8 A reference to the **end of the term** is to the end of the term however it ends
- 1.9 References to the **consent** of the Landlord are to the consent of the Landlord given in accordance with clause 34.5 and references to the **approval** of the Landlord are to the approval of the Landlord given in accordance with clause 34.6
- 1.10 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

- 1.11 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
- 1.12 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
- 1.13 Any obligation on the Tenant 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 another person
- 1.14 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
- 1.15 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.16 A reference to **writing** or **written** does not include fax or email
- 1.17 Unless the context otherwise requires, references to clauses and Schedules are to the clauses and Schedules of this Lease and references to paragraphs are to paragraphs of the relevant Schedule
- 1.18 Clause, Schedule and paragraph headings shall not affect the interpretation of this Lease
- 1.19 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 1.20 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular

2. Grant

- 2.1 The Landlord with full title guarantee lets the Property to the Tenant for the Contractual Term
- 2.2 The grant is made, excepting and reserving to the Landlord the rights set out in clause 4, and subject to the Third Party Rights
- 2.3 The grant is made with the Tenant paying the following as rent to the Landlord:
 - 2.3.1 the Annual Rent and any VAT in respect of it;
 - 2.3.2 one half of the Insurance Rent in respect of the Building and any VAT in respect of it;
 - 2.3.3 all interest payable under this Lease; and

2.3.4 all other sums due under this Lease

3. Ancillary rights

3.1 Except as mentioned below, neither the grant of this Lease nor anything in it confers any right over neighbouring property nor is to be taken to show that the Tenant may have any right over neighbouring property, and section 62 of the LPA 1925 does not apply to this Lease

3.2 The right to the free passage and running of water gas electricity and soil and all other services from and to the Property through the pipes wires and drains and other service media which are now or may be hereafter in under or over the Landlord's Neighbouring Property

3.3 Rights of light, air, support and protection to the extent those rights are capable of being enjoyed at any time during the term

4. Rights excepted and reserved

4.1 The following rights are excepted and reserved from this Lease to the Landlord for the benefit of the Landlord's Neighbouring Property and to the extent possible for the benefit of any neighbouring or adjoining property in which the Landlord acquires an interest during the term:

4.1.1 rights of light, air, support and protection to the extent those rights are capable of being enjoyed at any time during the term;

4.1.2 The right for the tenant of the Landlord's Neighbouring Property and its duly authorised agents upon giving reasonable notice to enter the Property and to use the door from the Property to the yard for the purpose only of repairing and maintaining the Landlord's Neighbouring Property only, making good any damage caused.

4.1.3 The right to the free passage and running of water gas electricity and soil and all other services from and to Landlord's Neighbouring Property through the pipes wires and drains and other service media which are now or may be hereafter in under or over the Property

4.1.4 the right to use and to connect into Service Media at the Property which are in existence at the date of this Lease or which are installed or constructed during the Contractual Term;

4.1.5 at any time during the term, the full and free right to develop the Landlord's Neighbouring Property and any neighbouring or adjoining property in which the Landlord acquires an interest during the term as the Landlord may think fit;

4.1.6 the right to build on or into any boundary wall of the Property in connection with any of the Reservations; and

4.1.7 the right to re-route any Service Media at or serving the Property or re-route any means of access to or egress from the Property;

notwithstanding that the exercise of any of the Reservations or the works carried out pursuant to them result in a reduction in the flow of light or air to the Property or loss of amenity for the Property provided that they do not materially affect the use and enjoyment of the Property for the Permitted Use

- 4.2 The Landlord reserves the right to enter the Property:
 - 4.2.1 to repair, maintain or replace any Service Media or structure relating to any of the Reservations; and
 - 4.2.2 for any other purpose mentioned in or connected with:
 - (a) this Lease;
 - (b) the Reservations; and
 - (c) the Landlord's interest in the Property
- 4.3 The Reservations may be exercised by the Landlord and by anyone else who is or becomes entitled to exercise them, and by anyone authorised by the Landlord
- 4.4 The Tenant shall allow all those entitled to exercise any right to enter the Property, to do so with their workers, contractors, agents and professional advisors, and to enter the Property at any reasonable time (whether or not during usual business hours) and, except in the case of an emergency, after having given reasonable notice (which need not be in writing) to the Tenant
- 4.5 No party exercising any of the Reservations, nor its workers, contractors, agents and professional advisors, shall be liable to the Tenant or to any undertenant or other occupier of or person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of its exercising any of those Reservations except for:
 - 4.5.1 physical damage to the Property; or
 - 4.5.2 any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents the Landlord from excluding liability

5. Third Party Rights

- 5.1 The Tenant shall comply with all obligations on the Landlord relating to the Third Party Rights (insofar as those obligations relate to the Property) and shall not do anything (even if otherwise permitted by this Lease) that may interfere with any Third Party Right
- 5.2 The Tenant shall allow the Landlord and any other person authorised by the terms of the Third Party Right to enter the Property in accordance with its terms

6. The Annual Rent

- 6.1 The Tenant shall pay the Annual Rent and any VAT in respect of it on or before the Rent Payment Dates. The payments shall be made by banker's standing order or by

any other method that the Landlord requires at any time by giving notice to the Tenant

- 6.2 The first instalment of the Annual Rent and any VAT in respect of it if demanded shall be made on the Rent Commencement Date

7. Insurance

- 7.1 Subject to clause 7.2, the Landlord shall keep the Property (other than any plate glass at the Property) insured against loss or damage by the Insured Risks for the sum which the Landlord considers to be its full reinstatement cost (taking inflation of building costs into account). The Landlord shall not be obliged to insure any part of the Property installed by the Tenant

- 7.2 The Landlord's obligation to insure is subject to:

7.2.1 any exclusions, limitations, excesses and conditions that may be imposed by the insurers; and

7.2.2 insurance being available in the London insurance market on reasonable terms acceptable to the Landlord

- 7.3 The Tenant shall pay to the Landlord on demand:

7.3.1 the Insurance Rent which is one half of the annual premium for the insurance policy of the Property

7.3.2 any amount that is deducted or disallowed by the insurers pursuant to any excess provision in the insurance policy; and

7.3.3 any costs that the Landlord incurs in obtaining a valuation of the Property for insurance purposes

- 7.4 If the Landlord insures the Property together with other land, the amount of the Insurance Rent shall be a fair proportion of the total for the Property and the other land

- 7.5 The Tenant shall:

7.5.1 immediately inform the Landlord if any matter occurs that any insurer or underwriter may treat as material in deciding whether or on what terms to insure or to continue to insure the Property and shall give the Landlord notice of that matter;

7.5.2 not do or omit anything as a result of which any policy of insurance of the Property or any neighbouring property may become void or voidable or otherwise prejudiced, or the payment of any policy money may be withheld, nor (unless the Tenant has previously notified the Landlord and has paid any increased or additional premium) anything as a result of which any increased or additional insurance premium may become payable;

7.5.3 comply at all times with the requirements and recommendations of the insurers relating to the Property;

7.5.4 give the Landlord immediate notice of the occurrence of any damage or loss relating to the Property arising from an Insured Risk or of any other event that might affect any insurance policy relating to the Property;

7.5.5 effect its own insurance for any contents at the Property (and for any plate glass at the Property); if it becomes entitled to the benefit of any insurance proceeds in respect of the Property (other than in respect of contents or plate glass) pay those proceeds or cause them to be paid to the Landlord; and

7.5.6 pay the Landlord an amount equal to any insurance money that the insurers of the Property refuse to pay by reason of any act or omission of the Tenant or any undertenant, their workers, contractors or agents or any person at the Property with the actual or implied authority of any of them

7.5.7 insure against third party claims in respect of the Property and in respect of the operation of this Agreement in the sum of at least Five Million (£5,000,000) Pounds Sterling with a recognised Insurance Company or such higher sum as the Council or Tenant reasonably consider necessary to provide sufficient insurance and the Tenant undertakes to increase the level of insurance should the above sum be reasonably deemed insufficient by the Council and upon request of the Council to produce the policy of such insurance and the receipt for the latest premium. If the Tenant fails to insure in accordance with this clause the Council shall be entitled upon default to insure against third party claims and recover the cost from the Tenant

7.5.8 at all times keep the internal wall surfaces, internal fixtures and fittings including all doors and windows of the Property (and all contents) insured to the full cost of reinstatement under a policy complying with the terms of this clause

7.5.9 produce to the Council on demand (but not more often than once in every year unless any building on the Property is destroyed or damaged in circumstances that might give rise to an insurance claim) any insurance policy effected pursuant to this clause and the receipt for the last premium paid thereon or (at the option of the Tenant) evidence from the insurers of the full terms of the policy and that the same is still in force and to produce to the Council as soon as received any endorsement varying the terms of the insurance policy or a copy thereof or sufficient evidence of the contents thereof

7.6 If, following damage to or destruction of the Property, the Landlord considers that it is impossible or impractical to reinstate the Property, the Landlord may terminate this Lease by giving notice to the Tenant. On giving notice this Lease shall determine but this shall be without prejudice to any right or remedy of the Landlord in respect of any breach of the tenant covenants of this Lease. Any proceeds of the insurance (other than any insurance for plate glass) shall belong to the Landlord

8. Rates and taxes

- 8.1 The Tenant shall pay all present and future rates, taxes and other impositions and outgoings payable in respect of the Property, its use and any works carried out there, except:
 - 8.1.1 any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this Lease; or
 - 8.1.2 any taxes, other than VAT and insurance premium tax, payable by the Landlord by reason of the receipt of any of the rents due under this Lease
- 8.2 If any rates, taxes or other impositions and outgoings are payable in respect of the Property together with other property, the Tenant shall pay a fair proportion of the amount payable
- 8.3 The Tenant shall not make any proposal to alter the rateable value of the Property or that value as it appears on any draft rating list, without the approval of the Landlord
- 8.4 If, after the end of the term, the Landlord loses rating relief (or any similar relief or exemption) because it has been allowed to the Tenant, then the Tenant shall pay the Landlord an amount equal to the relief or exemption that the Landlord has lost

9. Utilities

- 9.1 The Tenant shall pay all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities to or from the Property
- 9.2 If any of those costs are payable in relation to the Property together with other property, the Tenant shall pay a fair proportion of all those costs
- 9.3 The Tenant shall comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities

10. VAT

- 10.1 All sums payable by the Tenant are exclusive of any VAT that may be chargeable. The Tenant shall pay VAT in respect of all taxable supplies made to it in connection with this Lease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes
- 10.2 Every obligation on the Tenant, under or in connection with this Lease, to pay the Landlord or any other person any sum by way of a refund or indemnity, shall include an obligation to pay an amount equal to any VAT incurred on that sum by the Landlord or other person, except to the extent that the Landlord or other person obtains credit for such VAT under the Value Added Tax Act 1994

11. Default interest and interest

- 11.1 If any Annual Rent or any other money payable under this Lease has not been paid by the date it is due, whether it has been formally demanded or not, the Tenant shall

pay the Landlord interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period beginning on the due date to and including the date of payment

- 11.2 If the Landlord does not demand or accept any Annual Rent or other money due or tendered under this Lease because the Landlord reasonably believes that the Tenant is in breach of any of the tenant covenants of this Lease, then the Tenant shall, when that amount is accepted by the Landlord, also pay interest at the Interest Rate on that amount for the period beginning on the date the amount (or each part of it) became due until the date it is accepted by the Landlord

12. Costs

- 12.1 The Tenant shall pay the costs and expenses of the Landlord including any solicitors' or other professionals' costs and expenses incurred (both during and after the end of the term) in connection with or in contemplation of any of the following:
- 12.1.1 the enforcement of the tenant covenants of this Lease;
 - 12.1.2 serving any notice in connection with this Lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;
 - 12.1.3 serving any notice in connection with this Lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;
 - 12.1.4 the preparation and service of a schedule of dilapidations in connection with this Lease; or
 - 12.1.5 any consent or approval applied for under this Lease, whether or not it is granted
- 12.2 Where the Tenant is obliged to pay or indemnify the Landlord against any solicitors' or other professionals' costs and expenses (whether under this or any other clause of this Lease) that obligation extends to those costs and expenses assessed on a full indemnity basis

13. Compensation on vacating

Any right of the Tenant or anyone deriving title under the Tenant to claim compensation from the Landlord on leaving the Property under the LTA 1954 is excluded, except to the extent that the legislation prevents that right being excluded

14. Set-off

The Annual Rent and all other amounts due under this Lease shall be paid by the Tenant or any guarantor (as the case may be) in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law)

15. Registration of this Lease

- 15.1 Promptly following the grant of this Lease, the Tenant shall apply to register this Lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. Within one month after completion of the registration, the Tenant shall send the Landlord official copies of its title

16. Assignments

- 16.1 The Tenant shall not assign the whole or any part of this Lease

17. Underlettings

- 17.1 The Tenant shall not underlet the whole or any part of the Property

18. Charging

- 18.1 The Tenant shall not charge the whole or any part of this Lease

19. Prohibition of other dealings

Except as expressly permitted by this Lease, the Tenant shall not assign, underlet, charge, part with or share possession or share occupation of this Lease or the Property or hold the lease on trust for any person (except pending registration of a dealing permitted by this Lease at HM Land Registry or by reason only of joint legal ownership)

20. Closure of the registered title of this Lease

Within one month after the end of the term (and notwithstanding that the term has ended), the Tenant shall make an application to close the registered title of this Lease and shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly; the Tenant shall keep the Landlord informed of the progress and completion of its application

21. Repairs

- 21.1 The Tenant shall keep the Property, and other facilities within the Property clean and tidy and in no worse condition than at the date of this lease and shall ensure that any Service Media within and exclusively serving the Property is kept in good working order
- 21.2 The Tenant shall ensure that the Property has a suitable waste management service in place at all times

22. Alterations

- 22.1 The Tenant shall not make any external or structural alteration or addition to the Property and shall not make any internal, non-structural alteration to the Property without the consent of the Landlord, such consent not to be unreasonably withheld

22.2 The Tenant shall be permitted to make any internal, non-structural alteration to the Property without the consent of the Landlord

22.3 The Tenant shall not install any Service Media on the exterior of the Property nor alter the route of any Service Media at the Property without the consent of the Landlord, such consent not to be unreasonably withheld

23. Signs

23.1 In this clause **Signs** include signs, fascia, placards, boards, posters and advertisements

23.2 The Tenant shall not attach any Signs to the exterior of the Property or display any inside the Property so as to be seen from the outside except Signs of a design, size and number and in a position that are appropriate to the Property and the Permitted Use.

23.3 Before the end of the term, the Tenant shall remove any Signs placed by it at the Property and shall make good any damage caused to the Property by that removal

23.4 The Tenant shall allow the Landlord to fix to and keep at the Property any sale or re-letting board as the Landlord reasonably requires

24. Returning the Property to the Landlord

24.1 At the end of the term the Tenant shall return the Property to the Landlord in the repair and condition required by this Lease

24.2 If the Landlord gives the Tenant notice, the Tenant shall remove items it has fixed to the Property, remove any alterations it has made to the Property and make good any damage caused to the Property by that removal

24.3 At the end of the term, the Tenant shall remove from the Property all chattels belonging to or used by it

24.4 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels or items it has fixed to the Property and which have been left by the Tenant on the Property for more than ten working days after the end of the term. The Landlord shall not be liable to the Tenant by reason of that storage or disposal. The Tenant shall indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal

25. Use

25.1 The Tenant shall not use the Property for any purpose other than the Permitted Use

25.2 The Tenant shall not use the Property for any illegal purpose nor for any purpose or in a manner that would cause loss, damage, injury, nuisance or inconvenience to the Landlord, its other tenants or any other owner or occupier of neighbouring property

25.3 The Tenant shall not overload any structural part of the Property nor any machinery or equipment at the Property nor any Service Media at or serving the Property

26. Compliance with laws

- 26.1 The Tenant shall comply with all laws relating to:
 - 26.1.1 the Property and the occupation and use of the Property by the Tenant;
 - 26.1.2 the use or operation of all Service Media and machinery and equipment at or serving the Property whether or not used or operated, and shall, where necessary, replace or convert such Service Media within or exclusively serving the Property so that it is capable of lawful use or operation;
 - 26.1.3 any works carried out at the Property; and
 - 26.1.4 all materials kept at or disposed from the Property
- 26.2 Without prejudice to any obligation on the Tenant to obtain any consent or approval under this Lease, the Tenant shall carry out all works that are required under any law to be carried out at the Property whether by the owner or the occupier
- 26.3 Within five working days after receipt of any notice or other communication affecting the Property (and whether or not served pursuant to any law) the Tenant shall:
 - 26.3.1 send a copy of the relevant document to the Landlord; and
 - 26.3.2 take all steps necessary to comply with the notice or other communication and take any other action in connection with it as the Landlord may require
- 26.4 The Tenant shall not apply for any planning permission for the Property without the Landlord's consent not to be unreasonably withheld
- 26.5 The Tenant shall comply with its obligations under the CDM Regulations, including all requirements in relation to the provision and maintenance of a health and safety file. The Tenant shall maintain the health and safety file for the Property in accordance with the CDM Regulations and shall give it to the Landlord at the end of the term
- 26.6 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations
- 26.7 As soon as the Tenant becomes aware of any defect in the Property, it shall give the Landlord notice of it. The Tenant shall indemnify the Landlord against any liability under the Defective Premises Act 1972 in relation to the Property by reason of any failure of the Tenant to comply with any of the tenant covenants in this Lease
- 26.8 The Tenant shall keep the Property equipped with all fire prevention, detection and fighting machinery and equipment and fire alarms which are required under all relevant laws or required by the insurers of the Property or reasonably recommended by them or reasonably required by the Landlord and shall keep that machinery, equipment and alarms properly maintained and available for inspection
- 26.9 The Tenant will be responsible for all health and safety matters relating to the use of the Property including compliance with LOLER and PUWER regarding pressure vessels and lifting equipment and all other relevant legislation.

27. Encroachments, obstructions and acquisition of rights

27.1 The Tenant shall not grant any right or licence over the Property to a third party

27.2 If a third party makes or attempts to make any encroachment over the Property or takes any action by which a right may be acquired over the Property, the Tenant shall:

27.2.1 immediately inform the Landlord and shall give the Landlord notice of that encroachment or action; and

27.2.2 take all steps (including any proceedings) the Landlord reasonably requires to prevent or license the continuation of that encroachment or action

27.3 The Tenant shall not obstruct the flow of light or air to the Property nor obstruct any means of access to the Property

27.4 The Tenant shall not make any acknowledgement that the flow of light or air to the Property or that the means of access to the Property is enjoyed with the consent of any third party

27.5 If any person takes or threatens to take any action to obstruct the flow of light or air to the Property or obstruct the means of access to the Property, the Tenant shall:

27.5.1 immediately inform the Landlord and shall give the Landlord notice of that action; and

27.5.2 take all steps (including proceedings) the Landlord reasonably requires to prevent or secure the removal of the obstruction

28. Breach of repair and maintenance obligation

28.1 The Landlord may enter the Property to inspect its condition and state of repair and may give the Tenant a notice of any breach of any of the tenant covenants in this Lease relating to the condition or repair of the Property

28.2 If the Tenant has not begun any works needed to remedy that breach within two months following that notice (or if works are required as a matter of emergency, then immediately) or if the Tenant is not carrying out the works with all due speed, then the Landlord may enter the Property and carry out the works needed

28.3 The costs incurred by the Landlord 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 Tenant to the Landlord and payable on demand

28.4 Any action taken by the Landlord pursuant to this clause shall be without prejudice to the Landlord's other rights, including those under clause 31.

29. Indemnity

The Tenant shall keep the Landlord 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 Landlord's interest in the Property and loss of amenity of the

Property) suffered or incurred by the Landlord arising out of or in connection with any breach of any tenant covenants in this Lease, or any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Property with the actual or implied authority of any of them

30. Landlord's covenant for quiet enjoyment

The Landlord covenants with the Tenant, that, so long as the Tenant pays the rents reserved by and complies with its obligations in this Lease, the Tenant shall have quiet enjoyment of the Property without any interruption by the Landlord or any person claiming under the Landlord except as otherwise permitted by this Lease

31. Re-entry and forfeiture

31.1 The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:

31.1.1 any breach of any condition of, or tenant covenant in, this Lease;

31.1.2 an Act of Insolvency

31.2 If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this Lease shall immediately end, but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant or any guarantor

32. Joint and several liability

32.1 Where the Tenant comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Tenant arising under this Lease. The Landlord 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

32.2 Where a guarantor comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of a guarantor arising under this Lease. The Landlord 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.

32.3 The obligations of the Tenant and any guarantor arising by virtue of this Lease are owed to the Landlord and the obligations of the Landlord are owed to the Tenant

32.4 The Landlord shall not be liable to the Tenant for any failure of the Landlord to perform any landlord covenant in this Lease, unless and until the Tenant has given the Landlord notice of the failure and the Landlord has not remedied the failure within a reasonable time of service of that notice

33. Entire agreement

- 33.1 This Lease constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter
- 33.2 Each party acknowledges that in entering into this Lease it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently)
- 33.3 Nothing in this Lease constitutes or shall constitute a representation or warranty that the Property may lawfully be used for any purpose allowed by this Lease
- 33.4 Nothing in this clause shall limit or exclude any liability for fraud

34. Notices, consents and approvals

- 34.1 Except where this Lease specifically states that a notice need not be in writing, any notice given under or in connection with this Lease shall be:
 - 34.1.1 in writing and for the purposes of this clause an e-mail and fax is not in writing; and
 - 34.1.2 given 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
- 34.2 If a notice complies with the criteria in clause 34.1, whether or not this Lease requires that notice to be in writing, it shall be deemed to have been received:
 - 34.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 34.2.2 if sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting
- 34.3 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
- 34.4 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this Lease.
- 34.5 Where the consent of the Landlord is required under this Lease, a consent shall only be valid if it is given by deed, unless:
 - 34.5.1 it is given in writing and signed by the Landlord or a person duly authorised on its behalf; and
 - 34.5.2 it expressly states that the Landlord waives the requirement for a deed in that particular case
- 34.6 Where the approval of the Landlord is required under this Lease, an approval shall only be valid if it is in writing and signed by or on behalf of the Landlord, unless:
 - 34.6.1 the approval is being given in a case of emergency; or

34.6.2 this Lease expressly states that the approval need not be in writing

34.7 If the Landlord gives a consent or approval under this Lease, the giving of that consent or approval shall not imply that any consent or approval required from a third party has been obtained, nor shall it obviate the need to obtain any consent or approval from a third party

35. Governing law

This Lease 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 law of England and Wales

36. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Lease or its subject matter or formation (including non-contractual disputes or claims)

37. Break Clause

37.1 Definitions:

Break Date: a date which is at least 6 months working days after service of the Break Notice.

Break Notice: written notice to terminate this lease specifying the Break Date and the reason for the termination.

37.2 Either the Landlord or the Tenant may terminate this lease by serving a Break Notice at any time during on the other party.

37.2.1 by the Tenant if, for any reason, the Tenant decides that it wishes to end the lease or;

37.2.2 by the Landlord, only if the Property is required for redevelopment purposes

37.3 Subject to Clause 37.2, following service of a Break Notice this lease shall terminate on either the Break Date.

37.4 Termination of this lease on the Break Date shall not affect any other right or remedy that either party may have in relation to any earlier breach of this lease.

38. Exclusion of sections 24-28 of the LTA 1954

38.1 The parties confirm that:

38.1.1 the Landlord served a notice on the Tenant, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this lease before this lease was entered into;

38.1.2 the Tenant made a statutory declaration dated in accordance with the requirements of section 38A(3)(b) of the LTA 1954 a certified copy of which declaration is annexed to this Lease; and

38.1.3 there is no agreement for lease to which this lease gives effect.

38.2 The parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by this lease.

39. Contracts (Rights of Third Parties) Act 1999

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

IN WITNESS WHEREOF THIS DOCUMENT HAS BEEN EXECUTED AND DELIVERED ON THE DATE FIRST STATED ABOVE.

THE COMMON SEAL OF ISLE OF
WIGHT COUNCIL, in the presence of:

Authorised Signatory:

.....

Executed as a deed by VENTNOR
TOWN COUNCILL acting by

.....

the Town Clerk, in the presence of:

.....

[SIGNATURE OF WITNESS]

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[NAME AND ADDRESS OF WITNESS]