



LEASE OF CENTRAL CAR PARK SPACES

TOWN COUNCIL MEETING

REPORT 63/22

12 SEPTEMBER 2022

The purpose of this Report is to reach agreement on the Lease for the four spaces in the Central Car Park now occupied by the new Public Toilet

NO. DETAILS.

1) BACKGROUND

- a) Agreement² was reached with the Isle of Wight Council for the new Public Toilet to be built on four of the Central Car Park's bays at an annual rent of £2,950.
 - b) Heads of Terms for a Lease were agreed in October 2021.
 - c) The Isle of Wight Council has now provided a draft lease for the area, a copy of which is attached to this Report.
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2) ISSUES

- a) The draft lease was considered by the Assets and Services Working Group at its meeting of 23 August following which three matters were referred back to the Isle of Wight Council as outlined in the following paragraphs.
 - b) *Break Clause* [section 40, page 24] This gives the landlord the right to terminate the lease with 12 months' notice.
 - The Council's response to querying this has been to say that it reflects the Head of Terms and that if the break was required for the redevelopment of the car park compensation would be payable.
 - However the Heads of Terms refers to the Break Clause being used if the site is required *for the development or other uses* whereas there is no qualification in the lease.
 - c) *Rent review* [section 7, page 10] bases annual increases on the RPI, currently predicted to rise to 18.6% next year.
 - The Council's response to querying this was that the use of the RPI is standard practice in all their leases and that the Council is losing both income and the opportunity to benefit from future parking price increases.
 - However, at the time of the agreement to Lease the spaces the RPI was at 2.6% and current circumstances have changed dramatically so that there is still a strong case for a fixed percentage increase (if any) to be agreed.
 - d) *No right to renew* [section 26, page 19] requires return to the Landlord at the end of the 25 year term and the Council expects the Town Council to sign an exclusion of the right of renewal under the Landlord and Tenant Act 1954.
 - The Council's response to querying this was that it does not preclude a future use.
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3) RECOMMENDATION

The Town Council is recommended to consider the issue and their relationship to an agreed Lease.

Dated

2022

ISLE OF WIGHT COUNCIL
and
VENTNOR TOWN COUNCIL

LEASE

relating to

Part of the land within Central Car Park, High Street, 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)

IW47514

LR2.2 Other title numbers

None

LR3. Parties to this Lease

Landlord

ISLE OF WIGHT COUNCIL, of County Hall, High Street, Newport, Isle of Wight
PO30 1UD

Tenant

VENTNOR TOWN COUNCIL, of 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 rent charge burdening the Property

None

LR13. Application for standard form of restriction

The Parties to this Lease apply to enter the following standard form of restriction

None

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

None

This lease is made on the

day of

2022

BETWEEN

- (1) ISLE OF WIGHT COUNCIL, of County Hall, High Street, Newport, Isle of Wight PO30 1UD (the '**Landlord**'); and
- (2) VENTNOR TOWN COUNCIL, of 1 Salisbury Gardens, Dudley Road, Ventnor, Isle of Wight, PO38 1EJ (the '**Tenant**')

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this Lease

1.1 Definitions:

'Act of Insolvency';

- (a) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant;
- (b) the making of an application for an administration order or the making of an administration order in relation to the Tenant;
- (c) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant;
- (d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant;
- (e) the commencement of a voluntary winding-up in respect of the Tenant, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- (f) the making of a petition for a winding-up order or a winding-up order in respect of the Tenant;
- (g) the striking-off of the Tenant from the Register of Companies or the making of an application for the Tenant to be struck-off;
- (h) the Tenant otherwise ceasing to exist (but excluding where the Tenant dies); or
- (i) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Tenant

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

'Base Rate'; the base rate from time to time of Lloyds Bank PLC

'CDM Regulations'; the Construction (Design and Management) Regulations 2015 (SI 2015/51).

'Contractual Term'; a term of twenty five years beginning on, and including 1 August 2022 and ending on, and including 31 July 2047

'Default Interest Rate'; 4% above the Base Rate or, if that base rate is no longer used or published, 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 known as Central Car Park on the north side of the High Street, Ventnor, Isle of Wight and registered under title number IW47514

'LTA 1954'; Landlord and Tenant Act 1954

'Permitted Use'; The permitted use will be for the provision and management of public toilet facilities only

'Plan'; the plan attached to this lease

'Property'; All that property known as part of the land within Central Car Park, High Street, Ventnor and shown edged red on the attached Plan and registered under title number IW47514

'Rent'; annual ground rent at an initial rate of TWO THOUSAND, NINE HUNDRED AND FIFTY POUNDS (£2,950.00) per annum and then as revised pursuant to this Lease

'Rent Commencement Date'; 1 August 2022

'Rent Payment Dates'; annually on 1 August in each year of the Contractual Term

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

'Review Date'; 1 July 2023 and every anniversary of that date

'Rights'; all of the rights granted to the Tenant by this lease;

'Service Media'; all media for the supply or removal of electricity, 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 if any the matters referred to at the date of this Lease in the property and charges register of title number IW47514

'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.
- 1.4 The expressions **landlord covenant** and **tenant covenant** each has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995
- 1.5 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it
- 1.6 A reference to the **term** is to the Contractual Term
- 1.7 A reference to the **end of the term** is to the end of the term however it ends
- 1.8 References to the consent of the Landlord are to the consent of the Landlord given in accordance with clause 36.5 and references to the approval of the Landlord are to the approval of the Landlord given in accordance with clause 36.6
- 1.9 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England
- 1.10 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
- 1.11 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
- 1.12 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
- 1.13 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

- 1.14 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.15 A reference to **writing** or **written** does not include e-mail or fax
- 1.16 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
- 1.17 Clause, Schedule and paragraph headings shall not affect the interpretation of this Lease
- 1.18 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 1.19 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 together with the Rights set out in clause 3 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 Rent and all VAT in respect of it;
 - 2.3.2 all interest payable under this Lease; and
 - 2.3.3 all other sums due under this Lease

3. The Rights

- 3.1 The Landlord grants the Tenant a right of way with or without vehicles over Central Car Park.
- 3.2 The Landlord grants the Tenant 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
- 3.3 Except as mentioned above 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

4. The Reservations

- 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 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;
- 4.1.3 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;
- 4.1.4 the right to build on or into any boundary wall of the Property in connection with any of the Reservations; and
- 4.1.5 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
- 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 and the Landlord's Neighbouring 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 Rent

6.1 The Tenant shall pay the Rent and any VAT in respect of it annually in advance on or before the Rent Payment Date. 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 Rent and any VAT in respect of it shall be made on the Rent Commencement Date and shall be the proportion, calculated on a daily basis, in respect of the period beginning on the Rent Commencement Date until the day before the next Rent Payment Date

7. Review of the Rent

Definitions

(a) **Base RPI Month:** May 2022

(b) **Base Rent:** rent of £2,950.00 per annum.

(c) **RPI:** the Retail Prices Index or any official index replacing it.

7.1 Review of the Rent

7.1.1 In this clause, the President is the President for the time being of the Royal Institution of Chartered Surveyors or a person acting on his behalf (**President**), and the Surveyor is the independent valuer appointed pursuant to clause 7.1.12 (**Surveyor**).

7.1.2 The Rent shall be reviewed on an upward only basis on each Review Date to the indexed rent determined pursuant to this clause.

7.1.3 The indexed rent for a Review Date shall be determined by multiplying the Base Rent by the All Items index value of the RPI for the month two months before the month in which that Review Date falls, then dividing the product by the All Items index value of the RPI for the Base RPI Month. The increased amount shall then be added to the rental value of the preceding year.

7.1.4 The Landlord shall calculate the indexed rent as soon as reasonably practicable and shall give the Tenant written notice of the indexed rent as soon as it has been calculated.

- 7.1.5 If the revised Rent has not been calculated by the Landlord and notified to the Tenant on or before a Review Date, the Rent payable from that Review Date shall continue at the rate payable immediately before that Review Date. On the date the revised Rent is notified by the Landlord to the Tenant, the Tenant shall pay:
- 7.1.6 the shortfall (if any) between the amount that it has paid for the period from the Review Date until the Rent Payment Date following the date of notification of the revised Rent and the amount that would have been payable had the revised Rent been notified on or before that Review Date; and
- 7.1.7 interest at the Interest Rate on that shortfall calculated on a daily basis by reference to the Rent Payment Dates on which parts of the shortfall would have been payable if the revised Rent had been notified on or before that Review Date and the date payment is received by the Landlord.
- 7.1.8 Time shall not be of the essence for the purposes of this clause.
- 7.1.9 Subject to clause 7.1.10, if there is any change to the methods used to compile the RPI, including any change to the items from which the All Items index of the RPI is compiled, or if the reference base used to compile the RPI changes, the calculation of the indexed rent shall be made taking into account the effect of this change.
- 7.1.10 The Landlord and the Tenant shall endeavour, within a reasonable time, to agree an alternative mechanism for setting the Rent if either:
- (a) the Landlord or the Tenant reasonably believes that any change referred to in clause 7.1.9 would fundamentally alter the calculation of the indexed rent in accordance with this clause 7, and has given notice to the other party of this belief; or
 - (b) it becomes impossible or impracticable to calculate the indexed rent in accordance with this clause 7.
- This alternative mechanism may (where reasonable) include, or consist of, substituting an alternative index for the RPI. In default of agreement between the Landlord and the Tenant on an alternative mechanism for setting the Rent, the Surveyor shall determine an alternative mechanism.
- 7.1.11 The Surveyor shall determine a question, dispute or disagreement that arises between the parties in the following circumstances:
- (a) where any question or dispute arises between the parties as to the amount of the Rent payable or as to the interpretation, application or effect of any part of this clause 7; or
 - (b) where the Landlord and the Tenant fail to reach agreement under clause 7.1.10.

The Surveyor shall have full power to determine the question, dispute or disagreement, and shall have power to determine any issue involving the

interpretation of any provision of this lease, his jurisdiction to determine the question, dispute or disagreement referred to him or his terms of reference. When determining such a question, dispute or disagreement, the Surveyor may, if he considers it appropriate, specify that an alternative mechanism for setting the Rent should apply to this lease, and this includes (but is not limited to) substituting an alternative index for the RPI.

- 7.1.12 The Surveyor shall be an independent valuer who is a Member or Fellow of the Royal Institution of Chartered Surveyors. The Landlord and the Tenant may, by agreement, appoint the Surveyor at any time before either of them applies to the President for the Surveyor to be appointed.
- 7.1.13 The Surveyor shall act as an expert and not as an arbitrator. The Surveyor's decision shall be given in writing, and the Surveyor shall provide reasons for any determination. The Surveyor's written decision on the matters referred to him shall be final and binding in the absence of manifest error or fraud.
- 7.1.14 The Surveyor shall give the Landlord and the Tenant an opportunity to make written representations to the Surveyor and to make written counter-representations commenting on the representations of the other party to the Surveyor. The parties will provide (or procure that others provide) the Surveyor with such assistance and documents as the Surveyor reasonably requires for the purpose of reaching a decision.
- 7.1.15 Either the Landlord or the Tenant may apply to the President to discharge the Surveyor if the Surveyor
- (a) dies;
 - (b) becomes unwilling or incapable of acting; or
 - (c) unreasonably delays in making any determination

Clause 7.1.12 shall then apply in relation to the appointment of a replacement.

- 7.1.16 The fees and expenses of the Surveyor and the cost of the Surveyor's appointment and any counsel's fees, or other fees, reasonably incurred by the Surveyor shall be payable by the Landlord and the Tenant in the proportions that the Surveyor directs (or if the Surveyor makes no direction, then equally). If the Tenant does not pay its part of the Surveyor's fees and expenses within ten working days after demand by the Surveyor, the Landlord may pay that part and the amount it pays shall be a debt of the Tenant due and payable on demand to the Landlord. The Landlord and the Tenant shall otherwise each bear their own costs in connection with the rent review

8. Insurance

The Tenant will be responsible for all insurances relating to the Property and in particular for insuring against third party claims in respect of the Property and in

respect of the operation of this Lease in the sum of at least Ten Million (£10,000,000) Pounds with a recognised Insurance Company or such higher sum as the Landlord 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 Landlord and upon request of the Landlord 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 Landlord shall be entitled upon default to insure against third party claims and recover the cost from the Tenant

9. Rates and taxes

9.1 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:

9.1.1 any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this Lease; or

9.1.2 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

9.2 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

9.3 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

9.4 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

10. Utilities

10.1 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

10.2 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

10.3 The Tenant shall comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities and the Service Media at or serving the Property

11. VAT

11.1 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

- 11.2 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

12. Default interest and interest

- 12.1 If any 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
- 12.2 If the Landlord does not demand or accept any 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

13. Costs

- 13.1 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:
- 13.1.1 the enforcement of the tenant covenants of this Lease;
- 13.1.2 preparing and 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;
- 13.1.3 preparing and serving any notice in connection with this Lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;
- 13.1.4 the preparation and service of a schedule of dilapidations in connection with this Lease; or
- 13.1.5 any consent or approval applied for under this Lease, whether or not it is granted
- 13.2 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

13.3 The Tenant shall pay a contribution of £500 towards the Landlord's costs in connection with the negotiation and preparation of this Lease.

14. Set-off

The Rent and all other amounts due under this Lease shall be paid by the Tenant 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

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 without the consent of the Landlord, such consent not to be unreasonably withheld

16.2 The Landlord and the Tenant agree that the Landlord may give its consent to an assignment subject to any of the following reasonable conditions:

16.2.1 a condition that the assignor enters into an authorised guarantee agreement which:

(a) is in respect of all the tenant covenants of this Lease;

(b) is in respect of the period beginning with the date the assignee becomes bound by those covenants and ending on the date when the assignee is released from those covenants by virtue of section 5 of the Landlord and Tenant (Covenants) Act 1995;

(c) imposes principal debtor liability on the assignor;

(d) requires (in the event of a disclaimer of liability under this Lease) the assignor to enter into a new tenancy for a term equal to the unexpired residue of the Contractual Term; and

(e) is otherwise in a form reasonably required by the Landlord;

16.2.2 a condition that a person of standing acceptable to the Landlord enters into a guarantee and indemnity of the tenant covenants of this Lease in such form as the Landlord may reasonably require.

16.2.3 a condition that upon any such assignment the Lessor's costs incurred in connection with the assignment shall be met.

16.3 The Landlord and the Tenant agree that for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may refuse its consent to an assignment if any of the following circumstances exist at the date of the Tenant's application for consent to assign this Lease:

- 16.3.1 the Rent or any other money due under this Lease is outstanding or there has been a breach of covenant by the Tenant that has not been remedied;
- 16.3.2 in the Landlord's reasonable opinion the assignee is not of sufficient financial standing to enable it to comply with the Tenant's covenants and conditions contained in the lease; or
- 16.3.3 the assignee and the Tenant are group companies within the meaning of section 42 of the LTA 1954
- 16.4 The Landlord and Tenant agree that the Tenant will pay the Landlord 5% of the purchase price together with all the Lessor's costs incurred upon completion of any assignment.
- 16.5 Nothing in this clause shall prevent the Landlord from giving consent subject to any other reasonable condition, nor from refusing consent to an assignment in any other circumstance where it is reasonable to do so.

17. Underlettings

- 17.1 The Tenant shall not underlet the whole or any part of the Property except in accordance with this clause nor without the consent of the Landlord, such consent not to be unreasonably withheld
- 17.2 The Tenant shall not underlet the Property:
 - 17.2.1 together with any property or any right over property that is not included within this Lease;
 - 17.2.2 at a fine or premium or reverse premium; nor
 - 17.2.3 allowing any rent free period to the undertenant
- 17.3 Any underletting by the Tenant shall be by deed and shall include:
 - 17.3.1 an agreement between the Tenant and the undertenant that the provisions of sections 24 to 28 of the LTA 1954 are excluded from applying to the tenancy created by the underlease;
 - 17.3.2 the reservation of a rent which is not less than the full open market rental value of the Property at the date the Property is underlet and which is payable at the same times as the Rent under this Lease;
 - 17.3.3 provisions for the review of rent at the same dates and on the same basis as the review of rent in this Lease, unless the term of the underlease does not extend beyond the next Review Date;
 - 17.3.4 a covenant by the undertenant, enforceable by and expressed to be enforceable by the Landlord (as superior landlord at the date of grant) and its successors in title in their own right, to observe and perform the tenant covenants in the underlease and any document that is supplemental or collateral to it and the tenant covenants in this Lease, except the covenants to pay the rents reserved by this Lease; and

17.3.5 provisions requiring the consent of the Landlord to be obtained in respect of any matter for which the consent of the Landlord is required under this Lease, and shall otherwise be consistent with and include tenant covenants no less onerous (other than as to the Rent) than those in this Lease

17.4 In relation to any underlease granted by the Tenant, the Tenant shall:

19.4.1 not vary the terms of the underlease nor accept a surrender of the underlease without the consent of the Landlord, such consent not to be unreasonably withheld;

17.4.2 enforce the tenant covenants in the underlease and not waive any of them nor allow any reduction in the rent payable under the underlease; and

17.4.3 ensure that in relation to any rent review the revised rent is not agreed without the approval of the Landlord, such approval not to be unreasonably withheld

18. Charging

18.1 The Tenant shall not charge the whole of this Lease without the consent of the Landlord, such consent not to be unreasonably withheld

18.2 The Tenant shall not charge part only 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. Registration and notification of dealings and occupation

20.1 In this clause a **Transaction** is:

20.1.1 any dealing with this Lease or the devolution or transmission of, or parting with possession of any interest in it;

20.1.2 the creation of any underlease or other interest out of this Lease, or out of any interest, underlease derived from it, and any dealing, devolution or transmission of, or parting with possession of any such interest or underlease; or

20.1.3 the making of any other arrangement for the occupation of the Property

20.2 In respect of every Transaction that is registrable at HM Land Registry, the Tenant shall promptly following completion of the Transaction apply to register it (or procure that the relevant person so applies). The Tenant shall (or shall procure that) any requisitions raised by HM Land Registry in connection with an application to register a Transaction are dealt with promptly and properly. Within one month of completion of the registration, the Tenant shall send the Landlord official copies of its title (and where applicable of the undertenant's title)

20.3 No later than one month after a Transaction the Tenant shall:

- 20.3.1 give the Landlord's solicitors notice of the Transaction; and
- 20.3.2 deliver two certified copies of any document effecting the Transaction to the Landlord's solicitors
- 20.4 If the Landlord so requests, the Tenant shall promptly supply the Landlord with full details of the occupiers of the Property and the terms upon which they occupy it

21. 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

22. Repairs

- 22.1 The Tenant shall be responsible for all repair and maintenance relating to the Property.
- 22.2 The Tenant shall keep the Property clean and tidy and shall ensure that any Service Media within and exclusively serving the Property are kept in good working order

23. Decoration

- 23.1 The Tenant shall be responsible for keeping any buildings erected or to be erected in good decoration
- 23.2 All decorations shall be carried out in a good and proper manner using good quality materials that are appropriate to the Property and the Permitted Use and shall include all appropriate preparatory work

24. Alterations

- 24.1 The Tenant shall not make any external or structural alteration or addition to the Property and shall not make any opening in any boundary structure of the Property
- 24.2 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

25. Signs

- 25.1 In this clause **Signs** include signs, fascia, placards, boards, posters and advertisements
- 25.2 The Tenant shall not attach any Signs to the Property without the consent of the Landlord, such consent not to be unreasonably withheld
- 25.3 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

25.4 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

26. Returning the Property to the Landlord

26.1 At the end of the term, the Tenant shall return the Property to the Landlord in the repair and condition required by this lease and remove from the Property all chattels belonging to or used by the Tenant

26.2 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels, fittings or items it has fixed to the Property and which have been left by the 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.

26.3 If the Tenant does not comply with its obligations in this clause then, without prejudice to any other right or remedy of the Landlord, the Tenant shall pay the Landlord an amount equal to the Rent at the rate reserved immediately before the end of the term for the period that it would reasonably take to put the Property into the condition it would have been in had the Tenant performed its obligations under this clause. The amount shall be a debt due on demand from the Tenant to the Landlord.

27. Use

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

27.2 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

27.3 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

28. Compliance with laws

28.1 The Tenant shall comply with all laws relating to:

28.1.1 the Property and the occupation and use of the Property by the Tenant;

28.1.2 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;

28.1.3 any works carried out at the Property; and

28.1.4 all materials kept at or disposed from the Property

- 28.2 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
- 28.3 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:
- 28.3.1 send a copy of the relevant document to the Landlord; and
- 28.3.2 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
- 28.4 The Tenant shall not apply for any planning permission for the Property without the Landlord's consent
- 28.5 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.
- 28.6 The Tenant shall comply with any other health and safety obligations relating to the use of the Property
- 28.7 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
- 28.8 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
- 28.9 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
- 29. Encroachments, obstructions and acquisition of rights**
- 29.1 The Tenant shall not grant any right or licence over the Property to a third party
- 29.2 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:
- 29.2.1 immediately inform the Landlord and if the Landlord reasonably so requests, shall give the Landlord notice of that encroachment or action, or such other confirmation as the Landlord reasonably requires; and

- 29.3 do such acts and things that the Landlord reasonably requires to prevent or secure the removal of the obstruction
- 29.4 The Tenant shall not obstruct the flow of light or air to the Property nor obstruct any means of access to the Property
- 29.5 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
- 29.6 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:
 - 29.6.1 immediately inform the Landlord and shall give the Landlord notice of that action; and
 - 29.6.2 take all steps (including proceedings) the Landlord reasonably requires to prevent or secure the removal of the obstruction

30. Breach of repair and maintenance obligation

- 30.1 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
- 30.2 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
- 30.3 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
- 30.4 Any action taken by the Landlord pursuant to this clause shall be without prejudice to the Landlord's other rights, including those under clause 333

31. 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

32. 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

33. Re-entry and forfeiture

33.1 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:

33.1.1 any rent is unpaid 21 days after becoming payable whether it has been formally demanded or not;

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

33.1.3 an Act of Insolvency

33.2 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

34. Joint and several liability

34.1 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

34.2 The obligations of the Tenant arising by virtue of this Lease are owed to the Landlord and the obligations of the Landlord are owed to the Tenant

34.3 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

35. Entire agreement

35.1 This Lease constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to their subject matter

35.2 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)

35.3 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

35.4 Nothing in this clause shall limit or exclude any liability for fraud

36. Notices, consents and approvals

36.1 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:

36.1.1 in writing and for the purposes of this clause a fax or e-mail is not in writing; and

36.1.2 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;

36.2 If a notice complies with the criteria in clause 36.1, whether or not this Lease requires that notice to be in writing, it shall be deemed to have been received:

36.2.1 if delivered by hand, at the time the notice is left at the proper address;

36.2.2 if sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting;

36.3 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

36.4 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this Lease.

36.5 Where the consent of the Landlord is required under this Lease, a consent shall only be valid if it is given by deed, unless:

36.5.1 it is given in writing and signed by the Landlord or a person duly authorised on its behalf; and

36.5.2 it expressly states that the Landlord waives the requirement for a deed in that particular case

If a waiver is given, it shall not affect the requirement for a deed for any other consent

36.6 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:

36.6.1 the approval is being given in a case of emergency; or

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

36.7 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

37. 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

38. 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)

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

39.1 The parties confirm that:

39.1.1 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 not less than 14 days before this lease was entered into;

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

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

39.2 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.

40. Break Clause

40.1 Definitions:

Break Date: a date which is at least 12 months after service of the Break Notice.

Break Notice: written notice to terminate this lease specifying the Break Date.

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

40.3 A Break Notice served by the Tenant shall have no effect if, at the Break Date:

40.3.1 the Tenant has not paid any part of the Rent, or VAT in respect of it, which was due to have been paid; or

40.3.2 vacant possession of the whole of the Property is not given.

40.3.3 there is a subsisting material breach of any of the tenant covenants of this lease relating to the state of repair and condition of the Property

40.4. Subject to Clause 40.2, following service of a Break Notice this lease shall terminate on the Break Date.

40.5 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.

41. 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 was hereunto affixed in the presence of:-

.....
Authorised Signatory

Executed as a deed by VENTNOR TOWN COUNCIL by two Council Members in the presence of

.....
Authorised Signatory

.....
[SIGNATURE OF WITNESS]

.....
Authorised Signatory

.....
.....
.....
.....
[NAME AND ADDRESS OF WITNESS]