

Dated

16th August

2013

RYEDALE SHOWGROUND LIMITED

and

THE LANCASHIRE MORTGAGE CORPORATION LIMITED

**PLANNING OBLIGATION BY WAY OF UNILATERAL
UNDERTAKING UNDER SECTION 106 OF THE TOWN & COUNTRY
PLANNING ACT 1990 RELATING TO LAND AT PICKERING
SHOWGROUND, MALTON ROAD, PICKERING, NORTH
YORKSHIRE**

HSRLAW
Solicitors

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THIS DEED is made on the 16th day of August 2013

- (1) RYEDALE SHOWGROUND LIMITED incorporated and registered in England and Wales with company number 06877797 whose registered office is at Suite B, Annie Reed Court, Annie Reed Road, Beverley, East Yorkshire, England, HU17 0LF (the Owner); and
- (2) The Lancashire Mortgage Corporation Limited incorporated and registered in England and Wales with company number 2058813 whose registered office is at Lake View, Lakeside, Cheadle, Cheshire, SK8 3GW (the Mortgagee)

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner owns the Property subject to a mortgage in favour of the Mortgagee.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Owner intends to develop the Property pursuant to the Planning Permission.
- (E) The Mortgagee is the registered proprietor of the Charges and has agreed to enter into this Deed to give its consent to the terms of the unilateral undertaking.
- (F) In accordance with the Council's requirements on planning contributions the Owner gives this undertaking to perform the obligations set out in this Deed.

AGREED TERMS

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Deed:

Agreement; The copy agreement made between the Ryedale District Council (1), Simon Purston Boak (2) and Bristol & West Investments (3), dated 29th April 2004 and appended to this Deed.

Charges; The charge dated 31 July 2009 referred to in entry number 2 of the charges register of Title number NYK159492; the charge dated 31 July 2009 referred to in entry number 1 of the charges register of Title number NYK206386; the charge dated 31 July 2009 referred to in entry number 1 of the charges register of Title number NYK236844; the charge dated 31 July 2009 referred to in entry number 1 of the charges register of Title number NYK238371; the charge dated 31 July 2009 referred to in entry number 2 of the charges register of Title number NYK254378; and charge dated 31 July 2009 referred to in entry number 2 of the charges register of Title number NYK145927.

Commencement Date;	the date of Commencement of Development.
Council;	The Ryedale District Council, whose principal office is at Ryedale House, Malton, in the county of North Yorkshire, YO17 7HH.
Development;	The development of the Property described in the Planning Application.
Plan;	the plan attached to the Agreement.
Property;	All that piece of land together with buildings erected thereon situate and known as OS Field 0032/0027/0038 Malton Road, Pickering, North Yorkshire shown edged in blue on the Plan.
Planning Application;	an application for planning permission registered by the Council under reference number 13/00029/MFUL.
Planning Permission;	the planning permission to be granted by the Council in respect of the Planning Application.
TCPA 1990;	Town and Country Planning Act 1990.
Working Day;	a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this Deed.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made at the date of this Deed under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include e-mail.

- 1.11 References to clauses and plans are to the clauses and plans of this Deed.
- 1.12 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.13 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. Statutory provisions

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

3. Covenants with the Council

- 3.1 The Owner covenants with the Council to observe the negative obligations set out at the third schedule of the Agreement, and the positive Obligations set out at the fourth schedule of the Agreement.

4. Mortgagee's consent

- 4.1 The Mortgagee consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.
- 4.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

5. Release

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

6. Determination of deed

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

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

7. Local land charge

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

8. Ownership

8.1 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 5 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

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

9. Notices

9.1 Any notice required to be given under this Deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice at its address as set out below:

- (a) Council: Karen Hood at Ryedale House, Malton, in the county of North Yorkshire, YO17 7HH
- (b) Owner: Jason Bruton at 3A Banner Court, Priory Park East, Hull, East Yorkshire;

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

9.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10. Third party rights

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Council and the successors to its respective statutory functions shall have any rights to enforce any term of this Deed.

11. Severance

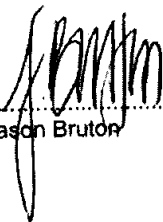
- 11.1 If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Deed shall not be affected.
- 11.2 If any invalid, unenforceable or illegal provision of this Deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

12. Governing Law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

Executed as a deed by Ryedale Showground Limited acting by Jason Bruton a director, in the presence of:


.....
Jason Bruton

ALSO
.....
SIGNATURE OF WITNESS
NAME

ANDREW WILSON COI
.....

ADDRESS; AND

CO. 8, 2nd Parade, Newark
.....

OCCUPATION OF WITNESS

SOLICITOR
.....

Executed as a deed by The Lancashire Mortgage Corporation Limited acting by *MARC SOLOBETS* a director, in the presence of:


.....
SIGNATURE OF WITNESS
NAME

Chole Stratta
.....

ADDRESS; AND

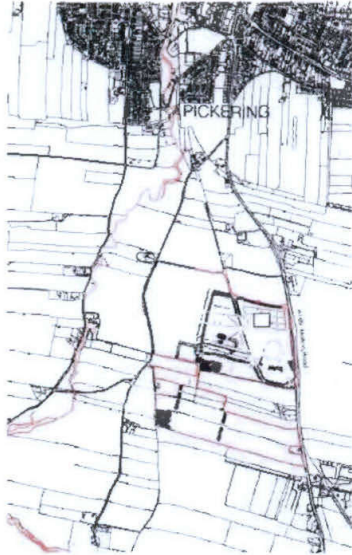
c/o Catherine Colverson Cheshire SKP 350V
.....

OCCUPATION OF WITNESS

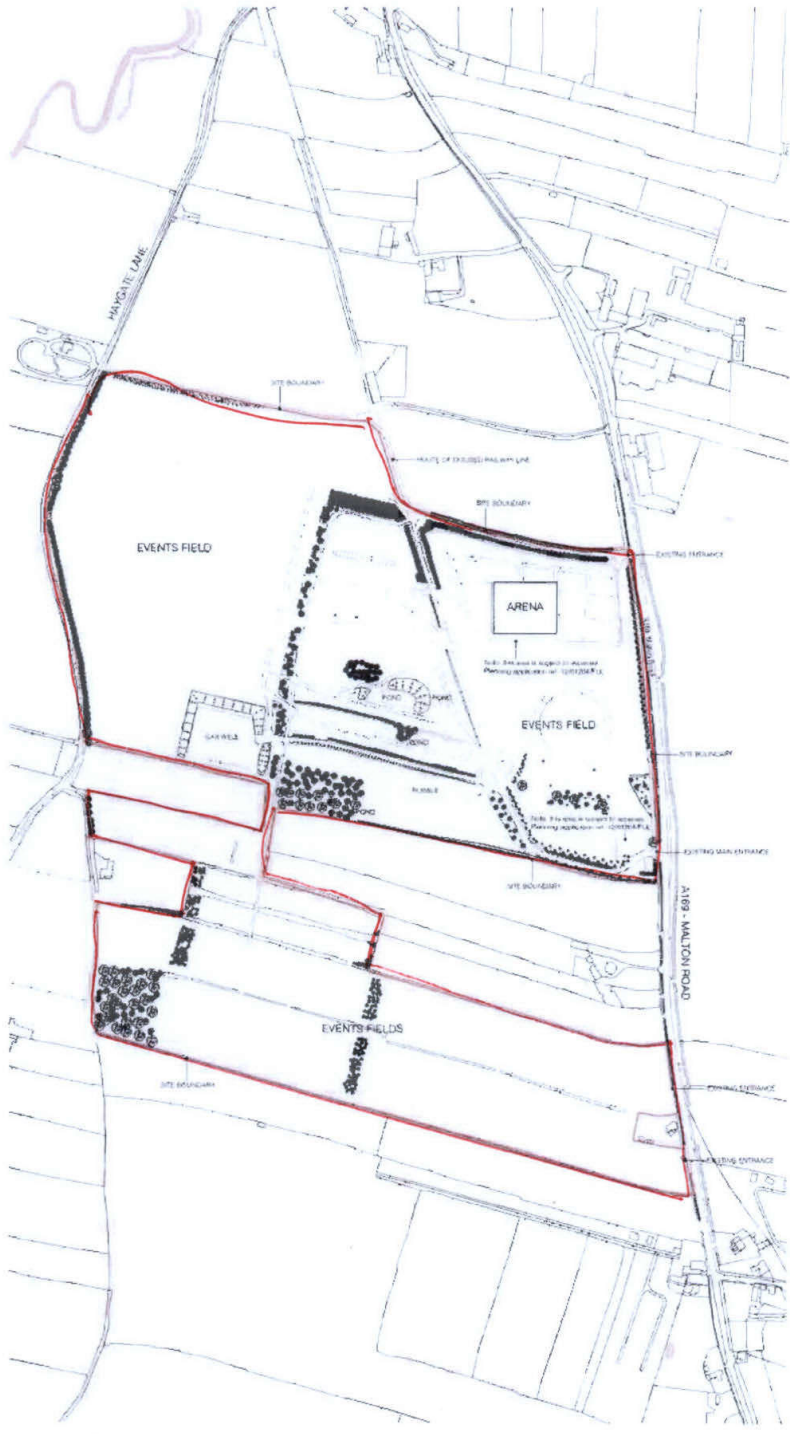
Solicitor
.....

APPENDIX

The Plan



LOCATION PLAN
Scale 1:5000



SITE PLAN
Scale 1:2000

Proposed Development of Existing Events Arena & Showground
Pickering Showground, Malton Road, Pickering
for Pickering Exhibition & Leisure Village

LOCATION PLAN & EXISTING SITE PLAN

DATE: 15/03/2011
PROJECT: PICKERING EXHIBITION & LEISURE VILLAGE
DRAWN: G. BIRNINGTON
CHECKED: G. BIRNINGTON
SCALE: 1:2000
DATE: 15/03/2011
PROJECT: PICKERING EXHIBITION & LEISURE VILLAGE
DRAWN: G. BIRNINGTON
CHECKED: G. BIRNINGTON
SCALE: 1:2000
DATE: 15/03/2011
PROJECT: PICKERING EXHIBITION & LEISURE VILLAGE
DRAWN: G. BIRNINGTON
CHECKED: G. BIRNINGTON
SCALE: 1:2000

graham birnington architects
15, North Sea View, Levens, HU11 3DQ
Tel: 01462 897521
info@grahambirningtonarchitects.co.uk

The Agreement

DATED 29th April 2004

THE RYEDALE DISTRICT COUNCIL

and

SIMON PURSTON BOAK

and

BRISTOL & WEST INVESTMENTS PLC

AGREEMENT

pursuant to Section 106 of the
Town and Country Planning Act 1990 as amended
and Section 111 of the Local Government Act 1972
in respect of OS Field 0032/0027/0038 Malton Road, Pickering in
North Yorkshire

K A Winship
Council Solicitor
MALTON

THIS DEED is made the 29 day of April 2004
BETWEEN

- 1 THE RYEDALE DISTRICT COUNCIL whose principal office is at Ryedale House Malton in the County of North Yorkshire YO17 7HH ("the Council")
- 2 SIMON PURSTON BOAK of PO Box 1 Pickering, North Yorkshire. YO18 7YG ("the Owner")
- 3 BRISTOL & WEST INVESTMENTS PLC whose Registered Office is at 12 Eclipse Office Park, Staple Hill, Bristol BS 16 5EL ("the Mortgagee")

RECITALS

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the property described in the First Schedule ("the Property") is situated
- (2) The Owner is the owner in fee simple in possession of the Property (subject as hereinafter mentioned but otherwise) free from encumbrances
- (3) The Mortgagee is mortgagee of the Property under a Legal Charge/Mortgage dated the ~~21 day of August 2001~~ ^{7th April 2004} and made between the Owner of the one part and the Mortgagee of the other part
- (4) The Owner has applied to the Council for permission to develop the Property in the manner and for the uses set out in Second Schedule hereto ("the Proposed Development")
- (5) The Council is satisfied that the performance by the Owner of the covenants herein will remove certain arguments against or objections to the Proposed Development which would without the execution of this Agreement have led to the refusal of consent for the Planning Application
- (6) The Owner has agreed to enter into this Agreement with the Council and be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and on his part to be observed and performed
- (7) The Mortgagee has agreed to join herein in manner hereinafter appearing

NOW THIS DEED WITNESSES as follows:-

- 1 THIS Agreement is made pursuant to Section 106 of the Town & Country Planning Act 1990 as amended ("the 1990 Act") Section 111 of the Local Government Act 1972 and all other powers the parties hereunto enabling

and the covenants in this Agreement are planning obligations for the purpose of the 1990 Act which are enforceable by the Council

2 THE Owner and the Mortgagee covenant with the Council that the Property shall be permanently subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Third Schedule hereto

3 THE Owner and the Mortgagee covenant with the Council that in relations to the Property the works and other matters specified in the Fourth Schedule shall be carried out in accordance with that Schedule

4 IT is agreed and declared as follows:-

4.1 The expressions "the Council" and "the Owner" and "the Mortgagee" shall include their respective successors in title and assigns

4.2 The Owner hereby agrees to carry out the Proposed Development in strict conformity with the plans and specifications and particulars submitted in connection with the Planning Application and to use the Property and all erections to be made thereon in strict accordance with this Agreement and not otherwise

4.3 For the purpose of such parts of this Agreement as may be subject to the Rule Against Perpetuities that part of the Agreement shall remain in force for the period of eighty years from the date hereof

4.4 The Owner shall on execution of this Agreement pay to the Council a fee to cover the Council's legal costs

4.5 The Owner shall indemnify and keep indemnified the Council against all damages costs charges losses demands expenses or action sustained by the Council arising from any breach of this Agreement by the Owner

4.6 The Mortgagee consents to the Owner entering into this Agreement to the intent that the Property shall hereafter always be subject to the terms of the Agreement PROVIDED THAT the Mortgagee shall only be liable for any breach occurring by reason of any act default or omission in respect of any provisions of this Agreement during such period (if any) as the Mortgagee is a mortgagee in possession of the Property PROVIDED ALWAYS that the successors in title to the Mortgagee shall become fully liable for any breach of this Agreement

4.7 In this Agreement words importing the masculine gender shall include the feminine gender and vice versa and words importing the singular number shall include the plural number and where there are two or more persons included in the expression "the Owner" covenants expressed to be made by or with the Owner shall be deemed joint and several

4.8 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed

4.9 For the purpose of avoidance of doubt and subject to clause 4.10 hereof the requirements of this Agreement shall bind the Property and remain in full force and effect until formally varied by agreement of the parties or by the Secretary of State notwithstanding that the Planning Application and any plans submitted with the same shall have lapsed or shall have been amended superseded renewed or resubmitted

4.10 This Agreement is a local land charge and shall be registered as such and shall come into full force and effect when the Proposed Development is commenced and not otherwise

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

THE FIRST SCHEDULE
[the Property]

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at and known as

OS Field 0032/0027/0038 Malton Road, Pickering, North Yorkshire, shown edged in blue on the Plan

THE SECOND SCHEDULE
[Particulars of the Proposed Development]

Erection of events arena and associated landscaping and parking.

THE THIRD SCHEDULE
[Negative Obligations]

For the purposes of this Schedule and the Fourth Schedule below the following definitions apply:

The 'Access' means the access to the Proposed Development shown coloured red on the Plan

The 'Alternative Access' means the alternative access to the Proposed Development shown coloured green on the Plan

The 'Plan' means the plan annexed to this agreement

The 'Planning Permission' means Application Number 03/00183/MFUL

The 'Railway' means the currently disused rail-link between Malton and Pickering shown cross-hatched black on the Plan.

The Owner covenants:

- a) not to construct any building or other structure on or over the Access
- b) until such time as it is required to facilitate the re-opening of the Railway not to use the Access other than as an access road for the Proposed Development in accordance with the Planning Permission,
- c) not to use the Access land to gain access to the Proposed Development within 6 months from receiving written notice from the Chief Executive of the Council that the land comprising the Access will be required to reinstate the Railway
- d) not to construct any building or other structure on or over the Alternative Access
- e) until such time as it is required as an access road for the Proposed Development to facilitate the re-opening of the Railway not to use the Alternative Access other than as car parking and landscaping in accordance with the Planning Permission.
- f) not to use the Alternative Access as an access road to the Proposed Development until the land comprising the Access has been transferred to the company operating the Railway on terms which are acceptable to the parties to the Transfer.
- g) not do or allow anything to be done on the Property that would hinder or interfere with or be inconsistent in any way whatsoever with the possible future development of the Access as the Railway.

THE FOURTH SCHEDULE
[Positive Obligations]

The Owner covenants

That in the event that the Access is required to facilitate the re-opening of the Railway and the Owner has received written notice of this from the Chief Executive of the Council

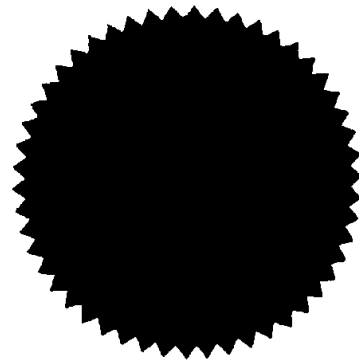
He will at his own expense :

a) submit, within 2 months of the date of the notice referred to above, to the Council for approval a scheme showing details of the Alternative Access, including roadway surfacing, landscaping and alterations to parking, layout and manoeuvring areas.

b) following the issue of written approval by the Council of the scheme to relocate the Access to the Alternative Access and undertake all necessary works to remove the existing access from the land comprising the Access and cease use of the Access within 3 months, in accordance with the approved scheme.

e) do all that he legally can in relation to the Property to facilitate re-opening of Railway.

THE COMMON SEAL of THE)
RYEDALE DISTRICT COUNCIL)
was hereunto affixed and)
is authenticated by:)



Chairman
/c

Council Solicitor

Minute P41 (6)/2003
Reg No. 5009
Initials EW

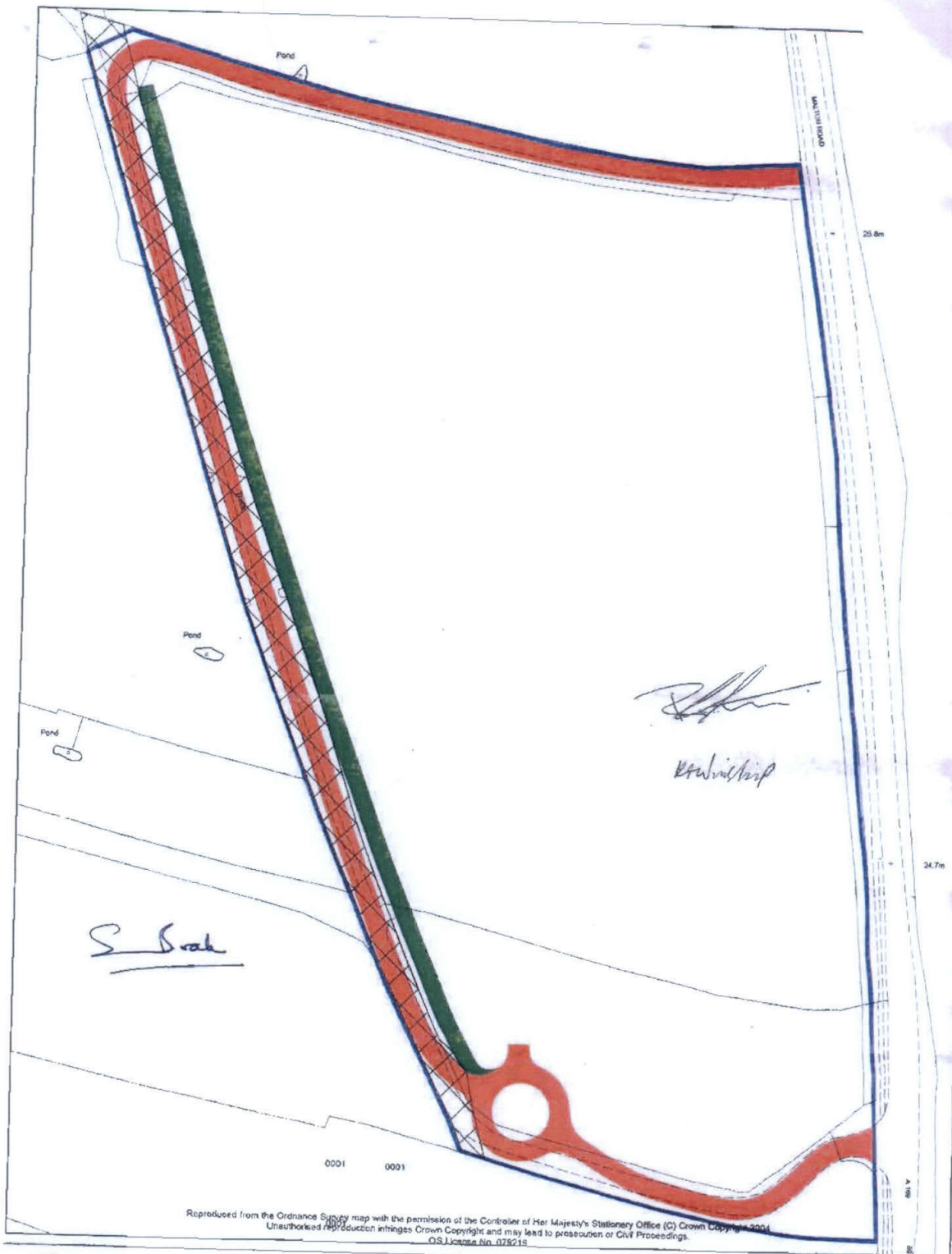
THE COMMON SEAL of the)
BRISTOL & WEST)
INVESTMENTS plc was affixed)
and is authenticated by)

Director

Secretary

SIGNED as a Deed by the said)
Simon Purston Boak in the)
presence of:)

John Drake
Legal Executive
with Elizabeth
Solihos Picking



SECTION 106 AGREEMENT OS FIELD NO 0032/0027/0038
MALTON ROAD, PICKERING

SCALE 1:1250



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