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# FREETHS

29 March 2018

- (1) SURREY COUNTY COUNCIL
- (2) SHEPPARD'S FLOCK LTD
- (3) MICHAEL SHEPPARD AND GILLIAN  
SHEPPARD

Deed of Variation and Consent to Works

Relating to

Rykas Cafe, Burford Bridge Mickleham, Surrey  
RH5 6BY

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THIS DEED is made on

29 March

2018

## BETWEEN

- (1) SURREY COUNTY COUNCIL of County Hall, Penrhyn Road, Kingston upon Thames KT1 2DN (Landlord).
- (2) SHEPPARD'S FLOCK LTD incorporated and registered in England and Wales with company number 09527346 whose registered office is at 79 Wingletye Lane, Hornchurch, Essex RM11 3AT (Tenant).
- (3) MICHAEL SHEPPARD and GILLIAN SHEPPARD of 126 Murray Avenue, Bromley, Kent BR1 3DT (Tenant's Guarantor).

## BACKGROUND

- (A) This deed is supplemental and collateral to the Lease.
- (B) The Landlord is entitled to the immediate reversion to the Lease.
- (C) The residue of the term granted by the Lease is vested in the Tenant.
- (D) The Landlord intends to carry out the Works and, under the terms of the Lease, requires the consent of the Tenant to do so.
- (E) The Landlord and the Tenant have agreed to vary the Lease on the terms set out in this deed.
- (F) The Tenant's Guarantor has agreed to join in this deed to record its consent to the variations in the Lease.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

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

#### 1.1. Definitions:

|                 |                                                                                                                                                                                                                                                                                                   |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Car Park        | That part of the Property shown edged red on the Plan;                                                                                                                                                                                                                                            |
| CDM Regulations | the Construction (Design and Management) Regulations 2015 (SI 2015/51);                                                                                                                                                                                                                           |
| Lease           | a lease of Rykas Café, Burford Bridge, Mickleham, Surrey RH5 6BY dated 17 May 2011 and made between (1) Surrey County Council (2) Kelidan Limited and (3) I.D. Anderson and K.E. Anderson as assigned to the Tenant under a Deed of Assignment dated 29 April 2015 and all documents supplemental |

- |                    |                                                                                                                   |
|--------------------|-------------------------------------------------------------------------------------------------------------------|
|                    | or collateral to that lease;                                                                                      |
| New Gates          | The gates forming part of the Works shown in light green on the Plan;                                             |
| Plan               | The plan attached to this deed at Annex 2                                                                         |
| Property           | Rykas Café, Burford Bridge, Mickleham, Surrey RH5 6BY as more particularly described in and demised by the Lease; |
| Tenant's Guarantor | Michael Sheppard and Gillian Sheppard of 126 Murray Avenue, Bromley, Kent BR1 3DT;                                |
| Term               | the term of years granted by the Lease and any agreed or statutory continuation of the Lease;                     |
| Works              | the works as shown on the Plan and specification attached at Annex 1 to this deed.                                |
- 1.2. References to the "Landlord" include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the **Tenant** include a reference to its successors in title and assigns.
  - 1.3. References to the "end of the Term" are to the end of the Term however it ends.
  - 1.4. The expression "tenant covenants" has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
  - 1.5. Clause headings shall not affect the interpretation of this deed.
  - 1.6. A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 1.7. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  - 1.8. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  - 1.9. 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.
  - 1.10. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  - 1.11. A reference to "writing" or "written" includes fax but not e-mail.
  - 1.12. A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
  - 1.13. Unless the context otherwise requires, references to clauses are to the clauses of this deed.

- 1.14. 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. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.16. Where a party to this deed includes more than one person, each person shall be jointly and severally liable for their obligations under this deed.

## **2. CONSENT TO CARRY OUT THE WORKS**

- 2.1. In consideration of the obligations on the Landlord in this deed, the Tenant consents to the Landlord carrying out the Works on the terms set out in this deed.
- 2.2. Nothing in this deed will place the Landlord under an obligation to the Tenant to carry out the Works, but if it does carry them out, it must do so on the terms of this deed.
- 2.3. This consent does not obviate the need for the consent or deed of any person other than the Tenant that may be required to carry out the Works.

## **3. CARRYING OUT AND COMPLETING THE WORKS**

- 3.1. The Landlord shall not start the Works until it has obtained all other licences and consents that may be required to carry them out.
- 3.2. The Landlord will be responsible for all costs and obtaining all consents in association with the Works.
- 3.3. The Landlord must provide the Tenant with two weeks’ notice prior to the commencement of the Works.
- 3.4. The Landlord must carry out the Works:
  - 3.4.1. using good quality, new materials which are fit for the purpose for which they will be used; and
  - 3.4.2. in a good and workmanlike manner and in accordance with good building and other relevant practices, codes and guidance.
- 3.5. In carrying out the Works the Landlord must comply with all laws and the terms of all licences and consents and must cause as little disturbance and inconvenience as reasonably possible to the Tenant and the owners and occupiers of any neighbouring land.
- 3.6. The Landlord must immediately make good any damage to any land or building, plant or machinery which is caused by carrying out the Works.

- 3.7. The Landlord must complete the Works, and any works required by Clause 3.6, within 6 weeks after the commencement of the Works.
- 3.8. The Landlord must notify the Tenant as soon as the Works have been completed.

#### 4. THE CDM REGULATIONS

- 4.1. The Landlord shall comply with its obligations under the CDM Regulations and shall supply all information to the Tenant that the Tenant reasonably requires from time to time to comply with the Tenant's obligations under the CDM Regulations.

#### 5. VARIATIONS

- 5.1. From but excluding the date on which the Landlord notifies the Tenant that the Works have been completed in accordance with clause 3.8, the Lease shall be read and construed as varied by the following provisions:
- 5.1.1. Clause number 5.3(a) of the Lease shall be amended to read:  
"To keep the Premises in good repair and condition (excluding the New Gates (as defined in the Deed of Variation and Consent to Works dated *29 march* 2018))"
- 5.1.2. Clause 5.23 (c) of the Lease shall be deleted and Clause 5.23 (a) of the Lease shall be amended to insert the words "and the car park" after the words "TO keep the kiosk and toilets"
- 5.1.3. Clause 5.27 of the Lease shall be amended by the addition of the following sentence at the end of the clause:  
"The Tenant will not be responsible to reinstate the works carried out by the Landlord under a Deed of Variation and Consent to Works dated *29 march* 2018 on the Termination of the Term"
- 5.1.4. Clause 7.2(b) of the Lease shall be amended by the addition of the following words at the end of the clause:  
"save in relation to the New Gates"
- 5.1.5. The following shall be inserted as a new clause 7.2(c): "To keep the New Gates in repair"
- 5.1.6. The following shall be added to the Second Schedule of the Lease as a new paragraph 3:  
"The exclusive right to use the Car Park (as defined in the Deed of Variation and Consent to Works dated *29 march* 2018) for short-stay parking of vehicles, including coaches and minibuses for the purpose of dropping off and picking up users of High Ashurst Outdoor Education Centre and transferring the users between vehicles from

Mondays to Fridays only between 0800 and 1800 from 1 March to 31 October (inclusive) and between 0800 and 1600 from 1 November to 29 February (inclusive). Subject to availability and with the prior consent of the Landlord, the Tenant may use the Car Park during these times free of charge as an overflow car park.

- 5.2. The Lease shall remain fully effective as varied by this deed and the terms of the Lease shall have effect as though the provisions contained in clause 5.1 had been contained in the Lease with effect from but excluding the date of completion of the Works.

## **6. TENANT'S COVENANT**

- 6.1. The Tenant covenants to observe and perform the Tenant's covenants in the Lease as varied by this deed.

## **7. LANDLORD'S COVENANT**

- 7.1. The Landlord covenants to observe and perform the Landlord's covenants in the Lease as varied by this deed.

## **8. COSTS**

- 8.1. On completion of this deed the Landlord must pay the reasonable costs and disbursements of the Tenant, its solicitors and surveyors in connection with this deed.
- 8.2. The Landlord must pay on demand any further reasonable costs and disbursements of the Tenant, its solicitors and surveyors incurred in connection with the Works or in making good any damage to any land or building, plant or machinery which is caused by the carrying out of the Works.

## **9. THE TENANT'S GUARANTOR**

- 9.1. The Tenant's Guarantor consents to the Tenant entering into this deed.
- 9.2. The Tenant's Guarantor agrees that its guarantee and other obligations under the Lease shall remain fully effective and:
- 9.2.1. to the extent that any provision of this deed varies the terms of the Lease, shall apply to the Lease as varied; and
- 9.2.2. subject to Clause 9.2.1 shall not be released or diminished by any provision of this deed.

- 9.3. Nothing in this deed shall prevent or limit the operation of section 18 of the Landlord and Tenant (Covenants) Act 1995.

## 10. REGISTRATION OF THIS DEED

- 10.1. Promptly following the completion of this deed, the Landlord shall apply to register this deed at HM Land Registry against the Tenant's registered title number SY796399.
- 10.2. The Landlord shall ensure that any requisitions raised by HM Land Registry in connection with an application for registration are dealt with promptly and properly.
- 10.3. Within one month after completion of the registration, the Landlord shall send to the Tenant official copies of the Tenant's registered title.

## 11. ENDORSEMENT

- 11.1. Promptly following completion of this deed both the Landlord and the Tenant shall each endorse a memorandum of variation upon the Lease and its counterpart in the following terms:

24 March 2018

"This Lease has been varied by a Deed of Variation dated [DATE] and made between Surrey County Council (1) Sheppard's Flock Ltd (2) and Michael Sheppard and Gillian Sheppard (3)".

## 12. NOTICES

- 12.1. Any notice given under or in connection with this deed must be in writing and must be delivered by hand or sent by pre-paid first class post or other next working day delivery service or by any other means permitted by the Lease. A correctly addressed notice delivered by hand shall be deemed to have been delivered at the time the notice is left at the proper address. A correctly addressed notice sent by pre-paid first class post or other next working day delivery service will be deemed to have been delivered on the second working day after posting.

## 13. LIABILITY

- 13.1. The obligations of the Landlord in this deed are owed to the Tenant and are made in consideration of the consent granted by Clause 2.1.

## 14. LANDLORD'S STATUTORY POWER

- 14.1. Nothing herein contained or implied shall prejudice or affect the rights powers duties and obligations of the Landlord in the exercise of its functions as a local planning

highway or buildings regulations authority or as a local authority under any other statutory provision and the rights powers duties and obligations of the Landlord under all public and private statutes bye-laws orders and regulations (other than those relating to its capacity as landowner) may be as fully and effectually exercised in relation to the Property as if the Landlord was not a part to this deed.

**15. THIRD PARTY RIGHTS**

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

**16. GOVERNING LAW**

16.1. 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.

**17. JURISDICTION**

17.1. 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 deed or its subject matter or formation (including non-contractual disputes or claims).

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 **SHEPPARD’S FLOCK LTD**

in the presence of:

.....  
Director

Witness’ signature:

Witness’ name:

Witness’ address:

Witness’ occupation:

**EXECUTED as a DEED**

by **MICHAEL SHEPPARD**

in the presence of:

Witness’ signature:

Witness’ name:

Witness’ address:

Witness’ occupation:

**EXECUTED as a DEED**

**GILLIAN SHEPPARD**

in the presence of:

Witness’ signature:

Witness’ name:

Witness’ address:

Witness’ occupation:

*dk*

**EXECUTED as a DEED**  
**by affixing THE COMMON SEAL**  
**of SURREY COUNTY COUNCIL**  
in the presence of and attested by:



*[Signature]* .....

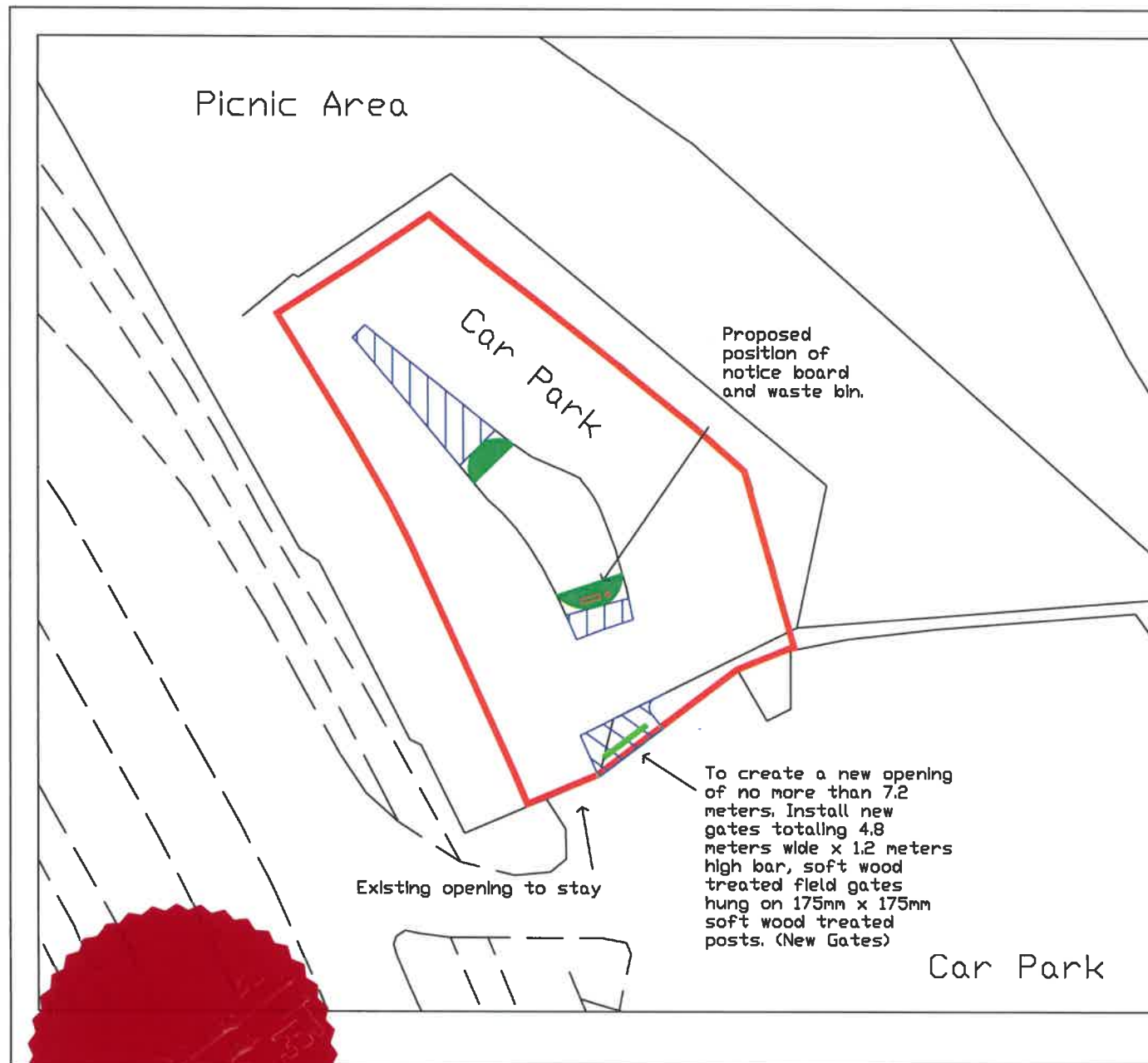
Authorised signatory

Position Held: *Acting Principal Solicitor*

## **ANNEX 1: SPECIFICATION FOR THE WORKS**

1. Within the areas hatched blue on the Deed of Variation Plan:
  - 1.1. remove the shrubs, grass and vegetation;
  - 1.2. excavate mounds of ground to reduce levels and clear soil from the site;
  - 1.3. lay road kerbs bedded and haunched in concrete as required to new edges;
  - 1.4. lay 300mm consolidated thickness of crushed concrete;
  - 1.5. lay 60mm consolidated thickness of 20mm gauge dense bituminous macadam binder course; and
  - 1.6. lay 40mm consolidated thickness of 10mm gauge dense bituminous macadam surface course.
2. Within the areas coloured dark green on the Deed of Variation Plan reshape the fall of the landscaping.
3. Remove the notice board and waste bin and relocate as shown on the Deed of Variation Plan
4. Supply and hang two 2.4m wide x 1.2m high 5 bar softwood treated field gates inclusive of all necessary galvanised fittings and hung on 175 x 175mm softwood treated posts concreted into the ground as shown in light green on the Deed of Variation Plan.
5. One-off cut back of approximately 120m of overgrown grass to the Car Park perimeter.

## **ANNEX 2: PLAN**



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# KEY

- Remove shrubs and grass. Excavate ground and clear soil from site. Install road kerbs as necessary. Lay crushed concrete foundation and lay bituminous macadam binder course and surface.
- Reshape fall of landscaping
- New Gates

|      |                  |          |    |       |
|------|------------------|----------|----|-------|
| B    | Multiple Changes | 18/07/17 | DA | Chk'd |
| Rev. | Description      | Date     | By | Chk'd |



Construction Management Unit, County Hall,  
Penryhn Road, Kingston upon Thames, Surrey, KT1 2DW  
Tel : 020 8541 7233

|             |                             |            |  |
|-------------|-----------------------------|------------|--|
| O.S. Ref.   | TQ 1752 SW                  |            |  |
| Scale       | 1:500                       |            |  |
| Surveyed by | Drawn by                    | Checked by |  |
| Date        | D.Anderson<br>Date 26.06.17 | Date       |  |

|            |
|------------|
| Location   |
| RYKAS CAFE |
| A24        |
| MICKLEHAM  |

|                        |
|------------------------|
| Title                  |
| Deed of Variation Plan |

|               |          |
|---------------|----------|
| Plan Reg. No. | CM 4018B |
| Plan File No. |          |