

DATED

16 November 2016

LICENCE TO OCCUPY

relating to the area known as land on the Beach at Denmark Place, Hastings

between

**HASTINGS BOROUGH COUNCIL AS TRUSTEE OF THE HASTINGS AND ST
LEONARDS FORESHORE CHARITABLE TRUST**

and

LEIGH EDWARD JOHN DYER

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SCHEDULE

SCHEDULE	RIGHTS GRANTED TO LICENSEE	ERROR! BOOKMARK NOT DEFINED.
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THIS LICENCE is dated 16 November 2016

PARTIES

- (1) HASTINGS BOROUGH COUNCIL as Trustee of THE HASTINGS AND ST LEONARDS FORESHORE CHARITABLE TRUST of Aquila House Breeds Place Hastings East Sussex TN34 3UY (**Licensor**).
- (2) LEIGH EDWARD JOHN DYER of 54 Vicarage Road Hastings East Sussex TN34 3LY (**Licensee**).

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

Licence Fee: the amount of ONE POUND per month.

Licence Fee Commencement Date: 14 September 2016.

Licence Period: the period from and including 14 September 2016 until the date on which this licence is determined in accordance with clause 4.

Necessary Consents: all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

Permitted Use: siting of the Work

Plan: the plan attached to this licence marked "ESAD 1721".

Property: the land on the Beach at Denmark Place Hastings shown coloured pink on the Plan.

Work: the sculpture entitled "The Landing" and more particularly described in the brief attached to this licence marked "Brief".

- 1.2 Clause and paragraph headings shall not affect the interpretation of this licence.

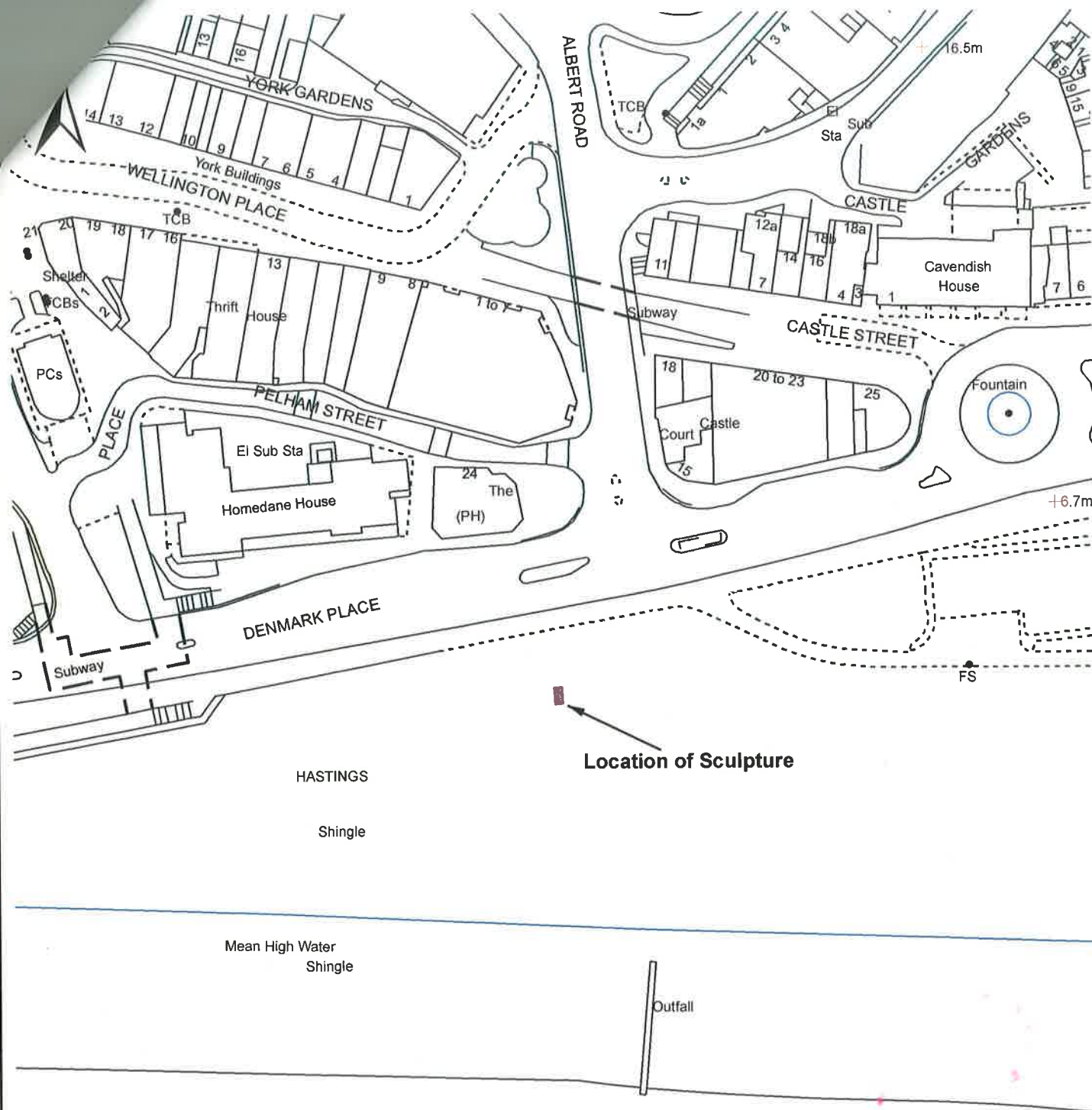
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 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.
- 1.7 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.
- 1.8 A reference to **writing** or **written** excludes fax and e-mail.
- 1.9 Any obligation on a party 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.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.11 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.
- 1.12 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

2. LICENCE TO OCCUPY

- 2.1 Subject to clause 3 and clause 4, the Licensor permits the Licensee to occupy the Property for the Permitted Use for the Licence Period in common with the Licensor and all others authorised by the Licensor (so far as is not inconsistent with the rights given to the Licensee to use the Property for the Permitted Use).
- 2.2 The Licensee acknowledges that:
- (a) the Licensee shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Licensor and the Licensee by this licence;



INSERT ADDRESS



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Hastings Borough Council
Aquila House, Breeds Place,
Hastings, East Sussex TN34 3UY

Date: Sept 2016

Scale: 1:1,250

Drawn: ST

Drawing No: ESAD 1721

- (b) the Licenser retains control, possession and management of the Property and the Licensee has no right to exclude the Licenser from the Property;
- (c) the licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights given in clause 2 may only be exercised by the Licensee and its employees; and

3. LICENSEE'S OBLIGATIONS

The Licensee agrees and undertakes:

- (a) to pay to the Licenser the Licence Fee payable without any deduction in advance on the Licence Fee Commencement Date;
- (b) to effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims (the Required Insurance);
- (c) that the cover shall be in respect of all risks including death or personal injury, loss of or damage to property or any other loss;
- (d) to give the Licenser upon request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurance is in place, together with receipts or other evidence of payment of the latest premiums due under those policies;
- (e) if, for whatever reason, the Licensee fails to give effect to and maintain the Required Insurances, the Licenser may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Licensee;
- (f) the terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement;
- (g) to maintain the Work as required and keep it in good and safe condition;
- (h) not to use the Property other than for the Permitted Use;
- (i) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Property without the prior written consent of the Licenser;
- (j) not to do or permit to be done on the Property anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Licenser or any owner or occupier of neighbouring property;
- (k) not to cause or permit to be caused any damage to:
 - (i) the Property or any neighbouring property; or
 - (ii) any property of the owners or occupiers of the Property, or any neighbouring property;

- (l) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Property or which will or might vitiate in whole or in part any insurance effected in respect of the Property from time to time;
- (m) to observe any rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Property;
- (n) to leave the Property in a clean and tidy condition and to remove the Work from the Property at the end of the Licence Period if so required by the Licensor; and
- (o) to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
 - (i) this licence;
 - (ii) any breach of the Licensee's undertakings contained in clause 3; and/or
 - (iii) the exercise of any rights given in clause 2;

4. TERMINATION

4.1 This licence shall end on the earliest of:

- (a) 13 September 2017; and
- (b) the expiry of any notice given by the Licensor to the Licensee at any time on breach of any of the Licensee's obligations contained in clause 3.

4.2 Termination of this licence shall not affect the rights of either party in connection with any breach of any obligation under this licence which existed at or before the date of termination.

5. NOTICES

5.1 Any notice given under this licence shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:

- (a) to the Licensor at: Aquila House Breeds Place Hastings East Sussex TN34 3UY and marked for the attention of the Chief Legal Officer; and
- (b) to the Licensee at: 54 Vicarage Road Hastings East Sussex TN34 3LY,
or as otherwise specified by the relevant party by notice in writing to each other party.

5.2 Any notice given in accordance with clause 5.1 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.

5.3 A notice given under this licence shall not be validly given if sent by e-mail.

5.4 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.

6. NO WARRANTIES FOR USE OR CONDITION

6.1 The Licensor gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.

6.2 The Licensor gives no warranty that the Property is physically fit for the purposes specified in clause 2.

6.3 The Licensee acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Licensor before the date of this licence as to any of the matters mentioned in clause 6.1 or clause 6.2.

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

7. LIMITATION OF LICENSOR'S LIABILITY

7.1 Subject to clause 7.2, the Licensor is not liable for:

- (a) the death of, or injury to the Licensee, its employees, customers or invitees to the Property; or
- (b) damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Property; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by clause 2.

7.2 Nothing in clause 7.1 shall limit or exclude the Licensor's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Licensor or its employees or agents; or

- (b) any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

8. THIRD PARTY RIGHTS

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

9. GOVERNING LAW

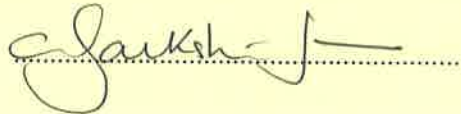
This licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

10. 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 licence or its subject matter or formation (including non-contractual disputes or claims).

This licence has been entered into on the date stated at the beginning of it.

Signed by
for and on behalf of HASTINGS
BOROUGH COUNCIL AS TRUSTEE
OF THE HASTINGS AND ST
LEONARDS FORESHORE
CHARITABLE TRUST



Signed by LEIGH EDWARD JOHN
DYER

