

## Deed of easement—right to lay and maintain a drain

(1) Grantor

and

(2) Grantee

and

(3) Mortgagee

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This Deed is made on *[insert date]*

## **PARTIES**

- (1) *[insert name of the owner of the Servient Land]* [of *[insert address]* OR incorporated in England and Wales with company registration number *[insert company registration number]* whose registered office is at *[insert registered office address]*] (**Grantor**);
- (2) *[insert name of the owner of the Dominant Land]*[ of *[insert address]* OR incorporated in England and Wales with company registration number *[insert company registration number]* whose registered office is at *[insert registered office address]*] (**Grantee**);
- (3) *[[insert name of the mortgagee]*[ of *[insert address]* OR incorporated in England and Wales with company registration number *[insert company registration number]* whose registered office is at *[insert registered office address]*] (**Mortgagee**).]

## **1 Definitions**

In this Deed the following definitions apply:

<b>Dominant Land</b>	the [freehold OR leasehold] land known as <i>[insert details]</i> [as registered at HM Land Registry with title number <i>[insert title number]</i> ] [shown <i>[edged red]</i> on the Plan];
<b>Plan</b>	the plan annexed to this Deed as Appendix 1;
<b>Rights</b>	the rights set out in Schedule 1;
<b>[Schedule of Condition</b>	means the schedule of condition of the Servient Land [prepared in accordance with Schedule 4 OR annexed to this Deed as Appendix 4];]
<b>Servient Land</b>	the [freehold OR leasehold] land known as <i>[insert details]</i> [as registered at HM Land Registry with title number <i>[insert title number]</i> ] [shown <i>[edged blue]</i> on the Plan];
<b>Specification</b>	the specification annexed to this Deed as Appendix 3;
<b>VAT</b>	value added tax or any other tax of a similar nature; and
<b>Works</b>	has the meaning given in paragraph 1 of Schedule 1.

## **2 Interpretation**

2.1 In this Deed:

- 2.1.1 Grantor[ and OR ,] Grantee [and Mortgagee] include their respective successors in title;

- 2.1.2 the [table of contents and] clause headings are for reference only and do not affect its construction;
- 2.1.3 the word 'liability' includes all costs, claims, expenses and loss incurred or suffered by the relevant party;
- 2.1.4 general words introduced by the word 'other' do not have a restrictive meaning even where preceded by words indicating a particular class of acts, things or matters;
- 2.1.5 where a party to this Deed includes two or more persons, the covenants made by that party are made by those persons jointly and severally;
- 2.1.6 an obligation in this Deed not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person.

### **3 Grant**

- 3.1 In consideration of £[insert figure] [(plus VAT)] (receipt of which is acknowledged by the Grantor) and the covenants set out in Schedule 6, the Grantor with [full OR limited] title guarantee in respect of the Servient Land grants to the Grantee the Rights to hold to the Grantee [in fee simple OR for a term of [insert number] years] commencing on [the date of this Deed OR [ insert date]].
- 3.2 All rights not expressly included in the Rights are reserved to the Grantor.
- 3.3 The Rights are granted subject to the observance and performance of the covenants contained in Schedule 6.
- 3.4 [The Rights are not granted exclusively to the Grantee and are granted in common with any other persons lawfully entitled to the Rights or similar rights in respect of the Servient Land.]

### **4 Reservation of rights**

The Grantor reserves for itself the rights set out in Schedule 2.

### **5 Grantor's covenants**

The Grantor covenants with the Grantee so as to bind the Servient Land into whosoever's hands it may come for the benefit and protection of the Dominant Land that the Grantor and its successors in title shall at all times after the date of this Deed observe and perform the covenants and restrictions set out in Schedule 5.

### **6 Grantee's covenants**

The Grantee covenants with the Grantor so as to bind the Dominant Land into whosoever's hands it may come for the benefit and protection of the Servient Land that the Grantee and its successors in title shall at all times after the date of this Deed observe and perform the covenants and restrictions set out in Schedule 6 [and the conditions set out in Schedule 3].

### **7 [Mortgagee's consent**

The Mortgagee as proprietor of a registered legal charge over the Servient Land consents to the grant of the Rights and payment of the consideration to the Grantor.]

## **8 HM Land Registry**

- 8.1 The Grantor [and the Mortgagee] consent[s] to the entry of a notice in the Charges Register of the title to the Servient Land in respect of this Deed.
- 8.2 On completion of this Deed, the Grantee covenants to register this Deed at HM Land Registry and, within 10 days of completion of registration, to provide the Grantor with official copies of the register(s) showing that, so far as is possible, the Rights and any restrictive covenants given by the Grantor and Grantee have been properly noted against the benefiting and burdened titles.

## **9 VAT**

- 9.1 All sums payable by the Grantee pursuant to this Deed are stated exclusive of VAT and the Grantee must pay to the Grantor any VAT chargeable in respect of the consideration for any supply made by the Grantor under this Deed.
- 9.2 Where the Grantee is required to reimburse the Grantor for any payment made by the Grantor, the Grantee must also pay to the Grantor an amount equal to the amount of VAT on that payment except to the extent that the Grantor can recover that VAT as input tax.

## **10 [Acknowledgment for production**

The Grantor acknowledges the right of the Grantee to production and delivery of copies of the deeds and documents described in Schedule 7 and to delivery of them and undertakes for their safe custody.]

## **11 Governing Law and Jurisdiction**

- 11.1 This Deed and any dispute or claim arising out of or in connection with it, its subject matter or its formation (including any non-contractual dispute or claim) is governed by, and must be construed in accordance with, the laws of England and Wales.
- 11.2 The courts of England and Wales have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or its formation (including non-contractual disputes or claims).

## **12 Contracts (Rights of Third Parties) Act 1999**

Unless expressly stated, nothing in this Deed creates any rights in favour of any person under the Contracts (Rights of Third Parties) Act 1999.

Executed and delivered as a deed on the date of this Deed.

**SCHEDULE 1  
THE RIGHTS**

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The following rights are granted to the Grantee and its successors in title as owners or occupiers for the time being of the Dominant Land in common with the Grantor and all other persons having the like rights:

- 1        [before *[insert date]*] to survey, construct, lay [and afterwards at all times to] relay, use, maintain, inspect, [alter enlarge], renew, replace, remove or render unusable a [foul OR surface water] [drain OR sewer] not exceeding *[insert number]* millimetres nominal diameter together with *[insert number]* inspection chambers, markers and other works and ancillary apparatus all described in more detail in the Specification and being the property of the Grantee in through upon and under the Servient Land in the position [more particularly OR approximately] marked on the Plan by a *[broken brown line]* and as to inspection chambers with *[brown squares]* (the Works) to drain [foul water and domestic effluent OR surface water] from [all buildings [now OR for the time being] on] the Servient Land to the public sewer at *[insert location]*;
- 2        full and free access where practicable with all necessary workmen and vehicles machinery and apparatus at all reasonable times and in emergency at any time over the part of the Servient Land shown coloured *[pink]* on the Plan in connection with the Works; [ and]
- 3        *[[Insert details of any other rights granted].]*

**SCHEDULE 2  
RESERVED RIGHTS**

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- 1 The following rights are reserved to the Grantor and its successors in title as owners or occupiers for the time being of the Servient Land:
- 2 [(without prejudice to the obligations of the Grantee contained in this Deed ) to carry out all or any of the Grantee's covenants and conditions on behalf of the Grantee but without any obligation on the part of the Grantor to do so]
- 3 at any time and from time to time (if but only if the Works shall be of sufficient capacity for the purpose but not otherwise) to connect one or more [drains OR sewers] into the Works and at all times afterwards (in common with the Grantee) to use the part of the Works from the point or points of connection forward to the public sewer (the 'Common Part') for the passage of [foul water and domestic effluent OR surface water] from [all buildings then on OR for the time being on] the Servient Land into the public sewer;
- 4 full and free access where practicable with all necessary workmen and vehicles, machinery and apparatus to the Common Part at all reasonable times and in emergency at any time for the purpose of connecting to the Works and inspecting, maintaining, renewing and replacing the Common Part [subject to the following conditions:]
  - 4.1 [after connection has been made to the Works the Grantor shall not except in case of emergency be entitled to carry out any maintenance or other works to the Common Part unless the Grantor shall first have given to the Grantee notice of the want of maintenance or other works and the Grantee shall not within 48 hours afterwards have commenced diligently to carry out the maintenance or other works;]
  - 4.2 [after the date upon which connection shall have been made to the Works the Grantor must pay to the Grantee a fair proportion according to user of the cost of inspecting cleansing maintaining and renewing the Common Part.]
- 5 [*insert any other reserved rights as required*].

**SCHEDULE 3  
THE CONDITIONS**

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- 1 At the commencement of laying or relaying of the Works to lay aside the top soil as close as practical to the trench and on completion of the laying or relaying of the Works to refill the trench and replace the top soil on top and as soon as climatically practical afterwards to re-seed the surface of the Servient Land to grass of a quality similar to that on the remainder of the Servient Land.
  
- 2 At all times during the execution of the Works to erect and until the re-seeding of the Servient Land to the satisfaction of the Grantor is fully grown and fit to graze to maintain a temporary fence stockproof against cattle horses and sheep in positions required by the Grantor in order to exclude animals from the site of the Works.
  
- 3 [*insert other conditions as appropriate, eg: approval of contractors, hours of working, vehicular access, use of mechanical diggers, deposit of materials, noise, dust, protection of trees shrubs and architectural features, use of water and electricity, toilet facilities, reinstatement works, security, employees, compliance with Grantor's surveyors' instructions etc*]



**SCHEDULE 4**  
**[SCHEDULE OF CONDITION**

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- 1 The Grantor must prepare or cause to be prepared the Schedule of Condition and supply a copy of it in duplicate to the Grantee;
- 2 If within seven days of receipt of the Schedule of Condition the Grantee has not returned one copy of it to the Grantor signed as agreed nor given notice in writing that they do not agree with it, then the Schedule of Condition shall be deemed to be agreed;
- 3 If within seven days of receipt of the Schedule of Condition the Grantee has given notice in writing that they do not agree with it and the Grantor and the Grantee cannot reach agreement on it within seven days after receipt by the Grantor of the notice of disagreement then the Grantee must instruct [*insert name and address of chartered surveyor*] to prepare the Schedule of Condition;
- 4 the surveyor shall act as an expert and their Schedule of Condition shall be binding on all parties;
- 5 the surveyor's fees for the preparation of the Schedule of Condition must be paid by the Grantee; and]

**SCHEDULE 5**  
**GRANTOR'S COVENANTS**

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The Grantor covenants:

- 1 not to obstruct, prevent or interrupt the exercise of the Rights by the Grantee;
- 2 not to erect any building, structure or erection nor plant any trees over or within [*three*] metres measured horizontally on either side of the Works;
- 3 not to make any material alteration to or any deposit of anything on or within [*three*] metres on either side of the Works measured horizontally so as to interfere with or obstruct access to the Works or so as to reduce or increase the depth of soil (if any) above the Works [but nothing in this sub-clause shall prevent the Grantor or occupier from carrying on normal [horticultural OR agricultural] operations on the Servient Land];
- 4 not to do anything on the Servient Land which may cause damage to the Works or affect their proper and efficient operation; [but these restrictions shall not prevent the Grantor erecting or constructing roads, footpaths, hard surfaces, service apparatus or fencing on the Servient Land];
- 5 [*insert any additional covenants as required*];

**SCHEDULE 6**  
**GRANTEE'S COVENANTS**

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- 1 The Grantee covenants:
  - 1.1 to comply with all Acts of Parliament and subordinate legislation governing the Works and the exercise of the Rights;
  - 1.2 [not to exercise any of the Rights until the Schedule of Condition is agreed or deemed to have been agreed or become binding on all parties;]
  - 1.3 to carry out and complete the Works within [insert number] of weeks of the commencement of them in accordance with the Specification in a good and workmanlike manner to the reasonable satisfaction of the Grantor and their surveyors [and the Mortgagee and their surveyors] or other agents and the local planning, public health and other appropriate authorities;
  - 1.4 at all times to maintain the Works in good repair and working order;
  - 1.5 not to exercise the Rights so as to cause any nuisance, annoyance or disturbance to the Grantor, the tenants or occupiers of the Servient Land or to the owners or occupiers of any adjoining or neighbouring land;
  - 1.6 not to allow any persons not authorised by them to exercise the Rights;
  - 1.7 forthwith to make good all damage caused to the Servient Land and to any service media laid in the Servient Land by the exercise of the Rights [so that the Servient Land is restored to the condition recorded in the Schedule of Condition];
  - 1.8 to keep the Grantor indemnified from and against any liability arising from the exercise of the Rights;
  - 1.9 before entry is made on the Servient Land for the purpose of constructing the Works to obtain the prior agreement in writing of the Grantor [and the occupier] to the date of entry to commence the Works (such consent not to be unreasonably withheld or delayed);
  - 1.10 before entry is made on the Servient Land after completion of the Works to give to the Grantor and occupier not less than 72 hours' prior notice (save in the case of emergency);
  - 1.11 to pay to the Grantor fair and reasonable compensation for all damage done to the Servient Land by the Grantee which is not made good;
  - 1.12 to pay all present and future rates, taxes, charges, assessments and outgoings imposed on or payable in respect of the Rights;
  - 1.13 to pay the Grantor's [and the Mortgagee's] legal and surveyor's fees and disbursements and VAT on them in connection with this Deed, the negotiations preceding it, [the Schedule of Condition], supervision of the Works, the reinstatement and making good of damage, and the settlement of all claims for compensation;
  - 1.14 to pay to the Grantor on demand the costs incurred by them in carrying out any obligation of the Grantee under this Deed where the Grantee is in default but the Grantor shall not be entitled to payment unless they have given notice to the Grantee of the obligation and of the

work required to comply with it and the Grantee has failed within 28 days of receipt of such notice to comply with their obligations;

- 1.15 to procure that a restriction is entered on the proprietorship register of the title to the Dominant Land as follows:

'No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number [*title number of Servient Land*] or their conveyancer [*or specify appropriate details*] that the provisions of paragraph 1.16 of Schedule 6 to a Deed of grant of easement dated [*insert date of Deed*] made between [*parties*] have been complied with (Form M)';

- 1.16 that it will not dispose of or part with its interest in the Dominant Land or any part of it without first procuring from its disponent or successor in title a covenant in favour of the Grantor in the form set out in Appendix 4.

**SCHEDULE 7**  
**[SERVIENT LAND TITLE DOCUMENTS]**

[List relevant title documents.]

Signed as a deed by <i>[insert full name of Grantor]</i> <i>[acting by a director]</i>	)	.....
In the presence of		
Witness signature:	)	.....
Name (in BLOCK CAPITALS):		<i>[insert name]</i>
Address:		<i>[insert address]</i>
Occupation:		<i>[insert occupation]</i>
Signed as a deed by <i>[insert full name of Grantor]</i> acting by <b>[a director and its secretary OR two directors]</b>	)	..... <i>[Director]</i>
	)	..... <b>[Director OR Secretary]</b>
Signed as a deed by <i>[insert full name of Grantee]</i> <i>[acting by a director]</i>	)	.....
In the presence of		
Witness signature:	)	.....
Name (in BLOCK CAPITALS):		<i>[insert name]</i>
Address:		<i>[insert address]</i>
Occupation:		<i>[insert occupation]</i>
<b>[OR]</b>		
Signed as a deed by <i>[insert full name of Grantee]</i> acting by <b>[a director and its secretary OR two directors]</b>	)	..... <i>[Director]</i>
	)	.....

		<b>[Director OR Secretary]</b>
Signed as a deed by <i>[insert full name of Mortgagee]</i> acting by <b>[a director and its secretary OR two directors]</b>	)	..... <b>[Director]</b>
	)	..... <b>[Director OR Secretary]</b>

**APPENDIX 1  
PLAN**

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*Annex copy of Plan.*

**APPENDIX 2**  
**[SCHEDULE OF CONDITION**

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*Annex copy of Schedule of Condition if agreed at the outset.]*



**APPENDIX 3  
SPECIFICATION**

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*Annex copy of Specification.*

**APPENDIX 4  
DEED OF COVENANT**

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THIS DEED is made on *[insert date]*

**PARTIES**

1 *[Insert name of owner of the Servient Land]* of *[insert address]* OR incorporated in England and Wales with company registration number *[insert company registration number]* whose registered office is at *[insert registered office address]* (the **Owner**); [and]

2 *[Insert name of entity acquiring interest in the Dominant Land]* of *[insert address]* OR incorporated in England and Wales with company registration number *[insert company registration number]* whose registered office is at *[insert registered office address]* (the **Transferee**);

**3 In this Deed:**

**Deed of Easement** a Deed of Easement dated *[insert date]* made between *[insert details of original parties]* affecting the Servient Land;

**Plan** the plan annexed to this Deed;

**Property** the *[freehold OR leasehold land known as [insert details of land acquired by Transferee] [as registered at HM Land Registry under title number [insert title number]] [shown [edged red] on the Plan]*;

**Servient Land** the freehold OR leasehold] land known as *[insert details] [as registered at HM Land Registry under title number [insert title number]] [shown [edged blue] on the Plan]*.

**4 Transferee's covenants**

The Transferee covenants with the Owner that it will:

4.1 observe and perform the covenants contained in paragraphs *[1.1, 1.4, 1.5, , 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16 and 1.17]* of Schedule 6 to the Deed of Easement as if:

4.1.1 those covenants were set out in full in this Deed;

4.1.2 references to the 'Dominant Land' in the Deed of Easement were references to the Property in this Deed.

**5 Release**

In consideration of the covenants in clause 4, the Owner releases *[insert name of seller of property being transferred]* from all of the obligations on the part of the Grantee under the Deed of Easement [and the deed of covenant dated *[insert date]* made between *[insert details of parties]*].