

DATED 2nd Sept 2005 2005

HORSERACE BETTING LEVY BOARD

- and -

RACECOURSE INVESTMENTS LIMITED

- and -

THE COUNCIL OF THE BOROUGH OF SPELTHORNE

---

DEED OF RENTCHARGE

to support covenants as to the use of land  
Kempton Park, Sunbury

---

We hereby certify this to be a true copy of the original

Dated this 8 day of Sept 2005

Trowers & Hamblins

TROWERS & HAMLINS

TROWERS & HAMLINS

Sceptre Court  
40 Tower Hill  
London EC3N 4DX



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HM LAND REGISTRY

LAND REGISTRATION ACT 2002

ADMINISTRATIVE AREA : Spelthorne

TITLE NUMBERS : SY471749 and SY644010

PROPERTY : Kempton Park, Sunbury

THIS RENTCHARGE is made by deed the 21 day of September 2005

**BETWEEN:**

- (1) **HORSERACE BETTING LEVY BOARD** (a body corporate under Section 24 Betting Gaming and Lotteries Act 1963) of 52 Grosvenor Gardens London SW1W 0AU ("HBLB")
- (2) **RACECOURSE INVESTMENTS LIMITED** (Co Regn. no. 2909409) whose registered office is at 23 Buckingham Gate London SW1E 6LB ("RIL")
- (3) **SPELTHORNE BOROUGH COUNCIL** of Council Offices Knowle Green Middlesex ("Spelthorne")

**RECITALS**

- A. HBLB is the registered proprietor of the Freehold Property
- B. RIL is the registered proprietor of the Leasehold Property
- C. Spelthorne has surrendered a lease dated 29 March 1974 made between Kempton Park Holding Company Limited (1) and The Urban District Council of Sunbury-on-Thames (2) by the Deed of Surrender to RIL and HBLB
- D. This Rentcharge grants two estate rentcharges created for the purposes specified in Section 2(4) Rentcharges Act 1977 which are (in brief) making covenants enforceable by Spelthorne against RIL and HBLB

**1. DEFINITIONS AND INTERPRETATION**

In this Rentcharge the following words and expressions have the meanings specified except when expressly stated to the contrary

1.1 **Definitions**

**“Additional Consideration”**

The monies payable to Spelthorne calculated in accordance with the First Schedule

**“Deed of Surrender”**

A deed of surrender made between HBLB RIL and Spelthorne on the day of 2005

**“Development”**

The meaning given in section 55 Town and Country Planning Act 1990 but does not include the construction and maintenance of a single all-weather horse racing track

**“Expert”**

A person appointed in accordance with clause 10

**“Freehold Property”**

All that freehold land registered at HM Land Registry under title number SY471749

**“Hours of Access”**

the hours between 9am and 5pm or such longer hours as may be agreed from time to time

**“the Heronry”**

that land edged blue on the Plan

**“Leasehold Property”**

All that leasehold land registered at HM Land Registry under title number SY644010

**“Losses”**

- (i) all liabilities properly incurred by Spelthorne
- (ii) all actual damage and loss suffered by Spelthorne
- (iii) all damages compensation and penalties properly awarded against Spelthorne
- (iv) all claims demands, actions and proceedings made or brought against Spelthorne

- (v) all reasonable fees costs and expenses properly incurred by Spelthorne
- (vi) interest at 2% above the base rate from time to time of the Royal Bank of Scotland plc from the due date of payment until the date of actual payment

And resulting from the breach by HBLB or RIL of their respective obligations contained in this Deed or in a Deed of Surrender made on the same date as this Deed between HBLB (1) RIL (2) and Spelthorne (3)

**“the Plan”**

The annexed plan

**“Planning Permission”**

any outline or detailed planning consent including listed building or conservation area consent whether granted by the Local Planning Authority or the Secretary of State

**“the Property Owner”**

refers to both HBLB and RIL and to their respective successors in title and assigns the owners for the time being of the Freehold Property and/or the Leasehold Property and/or any part thereof

**“the Property”**

includes both the Freehold Property and the Leasehold Property

**“this Rentcharge”**

the rentcharges created by this Deed being

(vii)

**“the HBLB Nominal Rentcharge”**

the yearly sum of £1-00 payable by HBLB and

(viii)

**“the HBLB Services Rentcharge”**

Losses (if any) incurred by Spelthorne in providing or attempting to provide the Services to RIL

(ix)

**“the RIL Nominal Rentcharge”**

the yearly sum of £1-00 payable by RIL

(x)

**“the RIL Services Rentcharge”**

Altered on 22.11.18 under Rule 130  
 of the Land Registration Rules 2003  
 by K. BRADBURY  
 For Chief Land Registrar

Losses (if any) incurred by Spelthorne in providing or attempting to provide the Services to HBLB

**“the Services”**

Reasonable contemplation preparation and service of any notices and any other lawful remedial action under clause 7 of this Deed

**“Working Day”**

a day which is not a Saturday, a Sunday, Christmas Day, Good Friday, a bank holiday in England and Wales, and any other day when race meetings are not being held at the Property

**1.2 Interpretation**

- 1.2.1 References without further designation to a clause schedule or annex are references to a clause or a schedule to or an annex to this Deed
- 1.2.2 The singular includes the plural and *vice versa*
- 1.2.3 Words of one gender include any other gender
- 1.2.4 An obligation to do anything includes an obligation to procure its being done
- 1.2.5 Any restriction includes an obligation not to permit infringement of the restriction
- 1.2.6 References to a particular statute or part of it (“statutory reference”) are to that statutory reference as it may have been extended modified amended or re-enacted at the date upon which its construction is relevant for the purposes of this Deed and not as originally enacted or as at the date of that Deed and include any derivative legislation
- 1.2.7 References generally to statute include derivative legislation and any rights from or other legislation of the European Union that is directly applicable in England and Wales and include existing statutes and those that come into effect while this Deed subsists
- 1.2.8 Sections 78 & 79 of the Law of Property Act 1925 apply in this Deed and
- 1.2.9 References to the Property Owner include its successors in title and persons deriving title under it or them and include the owners and occupiers for the time being of the Property and





CONSULTANTS

**H | E | D**  
Hyland Edgar Driver  
Landscape Architects and Urban Designers

**Kempton Park Racecourse**

One Wessex Way, Dublin, Co. Wick. Telephone: 01982 71860  
Whispering Willows, Harrogate, N Yorks. Telephone: 01962 713643



- 1.2.10 References to Spelthorne include its successors in title to this Rentcharge and persons deriving title under it or them
- 1.2.11 The Property includes each and every part of it
- 1.2.12 When there are two or more persons affected by the obligations under this Deed they are to bind each such person jointly and severally
- 1.2.13 If there is any ambiguity or conflict between the implied terms and the express terms of this Deed then the express terms are to prevail
- 1.2.14 The headings above the clauses and the contents page of this Deed are for reference only and do not affect its construction

## **2. GRANT OF RENTCHARGE**

2.1 In consideration of £1-00 paid by Spelthorne (of which HBLB acknowledges receipt) HBLB grants with full title guarantee to Spelthorne in fee simple

2.1.1 the HBLB Nominal Rentcharge and

2.1.2 the HBLB Services Rentcharge

2.2 In consideration of £1-00 paid by Spelthorne (of which RIL acknowledges receipt) RIL grants with full title guarantee to Spelthorne for the residue of the term of the lease by which the Leasehold Property is held

2.2.1 the RIL Nominal Rentcharge and

2.2.2 the RIL Services Rentcharge

## **3. RECEIPT FOR ADVANCE PAYMENT OF NOMINAL RENTCHARGE**

Spelthorne acknowledges receipt of

3.1 £25-00 as advance payment of the HBLB Nominal Rentcharge by HBLB for 25 years from the date of this Deed

3.2 £25-00 as advance payment of the RIL Nominal Rentcharge by RIL for the 25 years from the date of this Deed

## **4. HBLB COVENANTS**

HBLB so as to bind the Freehold Property into whosoever hands it may come covenants with Spelthorne for the benefit and protection of this Rentcharge to observe and perform the following covenants

- 4.1 Not to do anything on the Freehold Property by reason of which Spelthorne may incur any Losses
- 4.2 To pay within 28 days of written demand any Losses which Spelthorne may incur
- 4.3 To pay the Nominal Rentcharge in advance without deduction or set off on the twenty-fifth day of December in every year
- 4.4 To pay the Services Rentcharge with 28 days of written demand
- 4.5 To pay Spelthorne the Additional Consideration
- 4.6 For the period of 25 years from the date of this Deed not to permit any Development on the Freehold Property except in accordance with any Planning Permission (where necessary)
- 4.7 For the period of 25 years from the date of this Deed to maintain the Heronry to the reasonable satisfaction of Spelthorne in a proper clean safe and good condition suitable as woodland for use by the general public as a nature area but so that no organised sporting activities shall be carried out over the Heronry
- 4.8 Not to permit swimming in or boating on any water which is within or adjoining the Heronry except such boating as may be necessary for the purposes of the maintenance of the Heronry
- 4.9 For a period of twenty five years from the date of this Deed to permit access on twelve Working Days in each year during the Hours of Access to:
  - 4.9.1 persons nominated by Spelthorne in accordance with clause 6.1
  - 4.9.2 a maximum of 12 Persons at any one time at any time of the day up to midnight for the purposes of viewing bats and any other nocturnal animalson the condition that Spelthorne indemnifies RIL and HBLB against any losses suffered, actions, claims, demands or costs and expenses incurred including in particular but without limitation any personal injury claim brought by person to whom access is granted under this clause
- 4.10 To maintain adequate and clean and available reasonably close for use on visits under clause 6
  - 4.10.1 Toilet facilities
  - 4.10.2 One meeting room which is to be suitable for at least 40 people on the occasion of any school visit

5. **RIL COVENANTS**

- 5.1 RIL so as to bind the Leasehold Property into whosoever hands it may come covenants with Spelthorne for the benefit and protection of this Rentcharge to observe and perform the following covenants
- 5.1.1 To give HBLB all rights of access reasonably necessary to fulfil the covenants contained in clause 4 of this Rentcharge and to assist them in fulfilling such obligations in any way reasonably required by RIL
- 5.1.2 Not to do anything on the Leasehold Property by reason of which Spelthorne may incur any Losses
- 5.1.3 To pay within 28 days of written demand any Losses which Spelthorne may incur
- 5.1.4 To give written notice to Spelthorne of the Working Days in each year at least three months before the first of them
- 5.1.5 To ensure that there are at least three Working Days in each of the usual quarters
- 5.1.6 For the period of 25 years from the date of this Deed not to permit any Development on the Leasehold Land except in accordance with any Planning Permission (where necessary)
- 5.2 If the lease by which the Leasehold Property is held comes to an end the covenants in clause 5.1 will be deemed to have been given by HBLB so as to bind the Freehold Property into whosoever hands it may come

6. **SPELTHORNE'S COVENANTS**

Spelthorne covenants with HBLB and RIL and to their successors in title the owners for the time being of the Property in relation to its permitted use of the Heronry

- 6.1 To allow no more than 40 people per visit;
- 6.2 To visit only during the Hours of Access;
- 6.3 To give 30 days prior written notice before the date of a visit;
- 6.4 To remain only in the Heronry and not to wander to stray into other parts of the Property or surrounding areas;
- 6.5 Not to leave the Heronry dirty or untidy or to leave rubbish on it;
- 6.6 Not to damage or remove anything from the Heronry and not to harm, damage or remove any wildlife within the Heronry;



- 6.7 Not to use the Heronry otherwise than as agreed with HBLB in this Deed;
- 6.8 Not to obstruct the paths, roadways or other routes of access within the Property or cause them to become dirty or untidy nor to leave any rubbish on them;
- 6.9 Not to use the Heronry in such a way as to cause any nuisance, damage, disturbance, annoyance, inconvenience or interference to other parts of the Property or surrounding areas;
- 6.10 Not to do any act, matter or thing which would or might constitute a breach of any statutory requirement affecting the Heronry or which would or might vitiate in whole or in part any insurance effected in respect of the Property from time to time;
- 6.11 Not to impede the exercise of HBLB's rights of possession and control of the Heronry;
- 6.12 To observe such reasonable rules and regulations as HBLB or RIL may make from time to time governing the use of the Heronry and the Property of which Spelthorne has been given copies;
- 6.13 To comply with HBLB's health and safety regulations as may be in force from time to time;
- 6.14 To use only those toilet facilities designated by HBLB from time to time;
- 6.15 To use only those access ways and pathways as designated by HBLB or RIL;
- 6.16 To eat or picnic only in the areas designated by HBLB or RIL;
- 6.17 To park vehicles only in the areas designated by HBLB or RIL.

**7. SPELTHORNE'S REMEDIES**

- 7.1 The remedies for recovering and compelling payment of rentcharges conferred by Section 121 of the Law of Property Act 1925 apply to any breach of the provisions of this Deed
  - 7.1.1 this Rentcharge and
  - 7.1.2 the performance by RIL of the covenants in clause 5 and
  - 7.1.3 the performance by HBLB of the covenants in clause 4
- 7.2 In addition to the remedies mentioned in clause 7.1 if there is any breach of the covenants in clause 4 or 5 or if there are any arrears of this Rentcharge then
  - 7.2.1 Spelthorne may re-enter

- (i) the Property
- (ii) any part of the Property or
- (iii) any part of the Property in the name of the whole

and hold the Freehold Property re-entered in fee simple and the Leasehold Property re-entered for the residue of the term of the Lease free from incumbrances or

7.2.2 Spelthorne may enter

- (i) the Property or
- (ii) any part of the Property

and do anything to remedy the breach and may remain in possession and in receipt of the rents and profits of them respectively until all Losses have been fully discharged and until all Losses have been discharged they shall be a charge on the Property which shall be enforceable by Spelthorne as an equitable charge in priority to any charges created after the date of this Rentcharge

7.3 Spelthorne agrees to act in accordance with the provisions of section 146 Law of Property Act 1925 with regard to the right of re-entry at clause 7.2.1

8. **THIRD PARTY RIGHTS**

Nothing in this Deed is intended to confer any benefit on any person who is not a party to it

9. **PERPETUITIES**

If any of the powers incident to or annexed to this Rentcharge is subject to the rule against perpetuities then such powers shall be exercisable only during the life of the last survivor of the descendants now living of His late Majesty King George V or within the period of 21 years after the death of such survivor and such further period (if any) as may be permitted by law

10. **EXPERT DETERMINATION**

10.1 An Expert may be appointed by

10.1.1 agreement of Spelthorne RIL and HBLB jointly or

10.1.2 if not appointed within one month of a written request then by the President or other proper officer of the Royal Institution of Chartered Surveyors on the application of RIL or HBLB or Spelthorne

10.2 The costs of the Expert will be borne either equally or as the Expert directs

10.3 The Expert is to act as an expert and not as an arbitrator

10.4 The Expert is to

- (i) allow written representations
- (ii) may allow oral representations
- (iii) give written reason for his decision

## 11. **VALUE ADDED TAX**

Except when expressly stated to the contrary in this Deed

11.1 The amount of any payment or the value of any supply is expressed exclusive of Value Added Tax properly chargeable on it and

11.2 Where any payment or taxable supply falls to be made pursuant to this Rentcharge any Value Added Tax properly chargeable on it will be paid in addition by the recipient of the supply for which payment (if any) is consideration on the provision of a valid Value Added Tax invoice for it

## 12. **WAIVER AND REMEDIES**

12.1 The failure to exercise or delay in exercising a right or remedy provided by this Rentcharge or by law will not constitute

12.1.1 a waiver of the right or remedy or

12.1.2 a waiver of any other rights or remedies

12.2 A waiver of a breach of any of the covenants or of any of the conditions of this Deed or of a default under this Deed will

12.2.1 not constitute a waiver of any other breach or default

12.2.2 not affect the other covenants or conditions of this Deed

12.2.3 not prevent a party from subsequently requiring compliance with the waived covenant or condition

12.3 The rights and remedies provided by this Deed are cumulative and (unless expressly otherwise provided in this Deed) are not exclusive of any other rights or remedies provided by law



13. SEVERANCE

13.1 If any covenant or condition in this Deed is found by any court or tribunal of competent jurisdiction to be invalid or unenforceable that invalidity or unenforceability is to have no effect on the other covenants and conditions of this Deed and they will remain in full force and effect.

13.2 If any covenant or condition of this agreement is found to be invalid or unenforceable but would be valid or enforceable if some part of the covenant or condition were deleted then the covenant or condition will apply with such modification as may be necessary to make it valid and enforceable.

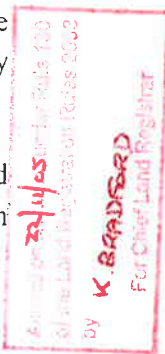
14. RELEASE OF OBLIGATIONS

14.1 On any transfer of the Freehold Property or Leasehold Property Spelthorne will release either HBLB or RIL (as applicable) from their obligations in this Deed if

- (i) in the reasonable opinion of Spelthorne the transferee is of sufficient financial standing to comply with their covenants in this deed, and
- (ii) the transferee covenants with Spelthorne to observe and perform the obligations of them in this Deed such covenant to be in a form approved by Spelthorne (acting reasonably and without delay)

14.2 The release mentioned in clause 14.1 will only have any ~~effect~~<sup>effect</sup> if made in a deed executed by Spelthorne and the transferee that contains the covenant mentioned in clause 14.1 (ii) and release shall have effect from the date of delivery of that Deed.

the



IN WITNESS of which the HBLB and RIL and Spelthorne have executed this Deed as a Deed the day and year first before written

## SCHEDULE 1

### Calculation of Additional Consideration

#### 1. DEFINITIONS

In this First Schedule the following words and expressions have the meaning specified except when expressly stated to the contrary

**“Enhanced Land Value”**

the market value of the Property taking account of the relevant Trigger Event

**“Initial Land Value”**

the market value of the Property disregarding the relevant Trigger Event

**“the Period”**

25 years from and including the date of this Rentcharge

**“the Property”**

the Freehold Property and the Leasehold Property together

**“Trigger Event”**

any of the following events:

- (i) any Development on the land edged green on the plan
- (ii) the implementation of any Planning Permission on the land edged green on the plan
- (iii) sale of any part of the Property when there is a Planning Permission the implementation of which would be a Trigger Event under either or both (i) and (ii)

For the avoidance of doubt the implementation of, or any Development carried out pursuant to, the planning permission to build the all weather track at the Property (planning reference number 04/00203/FUL) shall not be deemed to be a Triggering Event for the purposes of this Deed

2. **TRIGGER EVENT DURING THE PERIOD**

2.1 If a Trigger Event occurs within 25 years from the date of this Deed HBLB must pay to Spelthorne monies calculated in accordance with paragraph 2.2

2.2 The amount that is 33.3% of the difference between the Initial Land Value and the Enhanced Land Value

3. **PROVISION OF INFORMATION**

HBLB and RIL must provide all such information as Spelthorne may reasonably require to calculate the amount of Additional Consideration payable

4. **DATE OF PAYMENT**

4.1 The Additional Consideration will be payable by HBLB to Spelthorne 28 days after its agreement or determination

4.2 The Additional Consideration will accrue interest at the base rate for the time being of the Royal Bank of Scotland plc from the date due until the date of actual payment

5. **EXPERT DETERMINATION**

5.1 If RIL HBLB and Spelthorne do not agree within one month of a written request so to do

5.1.1 the Initial Land Value

5.1.2 the Enhanced Land Value or

5.1.3 the calculation of the Additional Consideration

then the relevant matter will be decided by the Expert

5.2 The Expert will make any determination of the market value of land in accordance with the then current edition of the Valuation Manual of the Royal Institution of Chartered Surveyors

## SCHEDULE 2

### Release of Rentcharge

#### 1. DEFINITIONS AND INTERPRETATION

In this Schedule the following words and expressions have the meanings specified except when expressly stated to the contrary

##### 1.1 Interpretation

References without further designation to a paragraph are references a paragraph of this Schedule

#### 2. AGREEMENT TO RELEASE

2.1 Spelthorne will release this Rentcharge and all its rights under this Deed with full title guarantee if after twenty five years from the date of this Rentcharge HBLB has paid to Spelthorne any Additional Consideration due prior to that date ("the Release")

2.2 If Spelthorne fails to effect the Release in accordance with clause 2.1 then Spelthorne will fully indemnify HBLB and RIL against all actions costs, losses, claims, demands and expenses arising as a result of such breach

#### 3. TITLE

3.1 The Property Owner admits and agrees that

3.1.1 Spelthorne has deduced title to the Rentcharge to the Property Owner

3.1.2 the Property Owner has investigated and accepted that title

3.1.3 the Property Owner will raise no requisitions or objections concerning that title except in relation to any matters that have arisen after the date of this Schedule

3.1.4 Standard Condition 4.1.1 does not apply to this Schedule

#### 4. COMPLETION

4.1 Completion of the Release will take place at the offices of Spelthorne's solicitors or where they may reasonably direct

4.1.1 Where the amount of any Additional Consideration due at the date of the Release has not been determined then the Release shall take place fourteen days after agreement or determination of the Additional Consideration

5. **STANDARD CONDITIONS**

This Schedule incorporates the Standard Commercial Property Conditions (First Edition)

6. **THIRD PARTY RIGHTS**

Nothing in this Schedule is intended to confer any benefit on any person who is not a party to it

7. **HM LAND REGISTRY**

7.1 Spelthorne consents to the entry of an agreed notice in the form set out below in the charges register of the title to the Rentcharge at HM Land Registry within three months of the date of this Deed:-

“Schedule to 2 to the Rentcharge dated the 21 day of September 2005 between Horserace Betting Levy Board (1) and Racecourse Investments Limited (2) and The Council of the Borough of Spelthorne (3) contains an agreement to release HBLB and RIL from their covenants and obligations contained therein”

7.2 Neither HBLB nor RIL will make any application to HM Land Registry for any entry in the title to the Rentcharge relating to this Schedule except that mentioned in paragraph 7.1



The Common Seal of **HORSERACE** )  
**BETTING LEVY BOARD** was )  
hereunto affixed in the presence of: )

Chairman

Chief Executive

Executed as a Deed by **RACECOURSE** )  
**INVESTMENTS LIMITED** acting by )  
two directors or a director and the )  
secretary )

Director

Director/Secretary

The Common Seal of the **SPELTHORNE** )  
**BOROUGH COUNCIL** was )  
hereunto affixed in the presence of: )



Authorised Officer

Number in Seal Register 10918  
Authority for Sealing EXEC 787