

DATED

2022

JOCKEY CLUB RACECOURSES LIMITED (1)

THE HORSERACE BETTING LEVY BOARD (2)

THE EPSOM AND WALTON DOWNS CONSERVATORS (3)

THE BRITISH HORSE SOCIETY (4)

THE EPSOM AND WALTON DOWNS TRAINING GROUNDS MANAGEMENT BOARD (5)

HACK CANTER AGREEMENT

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Our Ref: EJM/417109.65

THIS DEED is dated

2022

PARTIES

- 1 **JOCKEY CLUB RACECOURSES LIMITED** (company registration number 2909409, and whose registered office is at 75 High Holborn, London, WC1V 6LS) ("**JCR**");
- 2 **THE HORSERACE BETTING LEVY BOARD** (a statutory body whose main office is at 21-27 Lamb's Conduit St, London, WC1N 3NL) ("**the HBLB**");
- 3 **THE EPSOM AND WALTON DOWNS CONSERVATORS** (a body corporate and whose main office is at) ("**the Conservators**");
- 4 **THE BRITISH HORSE SOCIETY** (a company limited by guarantee and with registration number 0444742, and whose registered office is at Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ) ("**the BHS**"); and
- 5 **THE EPSOM AND WALTON DOWNS TRAINING GROUNDS MANAGEMENT BOARD** (an unincorporated association acting by its chairman, , and its treasurer/secretary, , and whose main office is at) (the "**TGMB**")

BACKGROUND

- A The HBLB are the owners of a 999 years' leasehold interest in Walton Downs, in the borough of Epsom and Ewell ("**Walton Downs**"), which is registered at HM Land Registry under title number SY 391623.
- B JCR are the owners of a 900 years' under-leasehold interest in Walton Downs, which is registered under their former name of Racecourse Investments Limited at HM Land Registry under title number SY 645094; JCR are also the owners of the freehold interest in Epsom Downs, which is registered at HM Land Registry under title number SY 229932.
- C The rights regarding the use of Epsom and Walton Downs ("**the Downs**"), and the responsibilities for its maintenance, were originally contained in the Epsom and Walton Downs Regulation Act 1936 ("**the 1936 Act**"), and are now contained in the Epsom and Walton Downs Regulation Act 1984 ("**the 1984 Act**").

- D The Conservators were incorporated under the 1936 Act, and by the 1984 Act they continue to be a body corporate. They should consist of 10 members, a majority of whom are appointed by the Epsom & Ewell Borough Council ("**the Council**").
- E The 1984 Act began as a Bill promoted by the HBLB and the Council initially in the House of Lords and subsequently in the House of Commons. In the Select Committee of the House of Lords in 1982, undertakings were provided by the promoters (i) to set up a consultative committee (to which the Conservators, the TGMB, the BHS and the Epsom Downs Riders Protection Association ("**the EDRPA**") inter alia would be members) ("**the Downs Consultative Committee**"), (ii) to look to the Conservators to preserve the Downs as far as possible in their natural state, and (iii) to allow on conditions hack riding along areas delineated on a signed map ("**the signed map**"); in the Committee of the House of Commons in 1984, the area of permitted hack riding on the signed map was varied to include the construction of a sand track ("**the Hack Ride**"), and an undertaking was given for the future maintenance of the Hack Ride partly by HBLB (the "**HBLB Undertaking**") and partly by the TGMB.
- F As one of the original petitioners to the House of Lords in 1982 (the other petitioner was the EDRPA), the BHS have continued to retain a strong interest in the provision of hack riding at Walton Downs, and they in particular have remained in regular dialogue with JCR and with the Conservators (through the Downs Consultative Committee) regarding the condition of the Hack Ride. The Select Committee envisaged a time when there may be successors to the EDRPA, and whilst the EDRPA do not function as they previously did, the BHS are not aware of there being any successor organisation.
- G In exercise of their responsibility to manage and maintain the Downs, the Conservators have published bye-laws for the proper conduct of those using the Downs and the latest version of those bye-laws ("**the Bye-Laws**") came into operation on 16 April 2013.
- H The Conservators published a strategy for management and use of the Downs in 2006 ("**the 2006 Strategy**") and under the heading "Hack Riding", the Conservators summarised their responsibility as they then saw it to maintain the hack areas and rides.

- I The Hack Ride has proved costly to maintain, especially at times of heavy weather, and there is a desire by the HBLB, the TGMB, and the Conservators to seek an alternative and more appropriate ride that is easier to operate and to maintain to the standard required for safe and responsible hack riding.
- J In discussion between JCR, the Conservators, and the BHS, it has been agreed that the interests of all hack riders would best be served by the substitution of the Hack Ride as shown on the signed map with a new ride as shown on the plan attached to this agreement at Schedule 1 ("**the Plan**"), and to that end, and in the interests of the safety of horses and their riders, and others from time to time using the Downs, that the hack ride shown generally 16 m in width on the Plan, hereinafter referred to as "**the Hack Canter**", shall be substituted for the Hack Ride shown on the signed map.
- K In addition to the discussions referred to at Recital J, advertisements have been placed in newspapers circulating in the area of the Downs, announcements have been made on the social media pages (ie Facebook and Twitter) of the BHS, JCR and the Council, letters have been sent to the proprietors of local riding schools, livery yards, riding clubs, pony clubs and polo clubs, and an informal survey undertaken, all explaining the planned closure of the Hack Ride and the planned opening of the Hack Canter, and no objections or representations of any substance have been received.
- L For these purposes, and only to the extent of the notifications given in clause K, the BHS accept and acknowledge, insofar as practicable, and bearing in mind the intentions behind their representations as referred to in Recital F, that they have the ability firstly to concede rights to use the Hack Ride, and to accept on behalf of all riders making use of hacking facilities at Walton Downs the provision of new rights to use the Hack Canter; to the extent necessary, the BHS confirm that the terms contained in this agreement are the best that can reasonably be obtained, and that they are satisfied that they have complied with the requirements of the Charities Act 2011.
- M The Conservators, being mindful of the provisions of the 1984 Act, and of all the undertakings given concerning them to the Select Committee of the House of Lords in 1982, and having regard in particular to their conditional rights contained in section 15 of the 1984 Act, have agreed that the Hack Canter may be authorised by them for future hack riding, and having regard to their responsibility for the

health and safety of all users of the Downs, have also agreed that the Hack Ride should be closed.

- N The Downs Consultative Committee were duly formed pursuant to the undertaking given to the Select Committee of the House of Lords, and at their meeting on 12 January 2022, they duly noted the proposed closure of the Hack Ride and the proposed provision of the Hack Canter.
- O The TGMB have by general meeting held on _____ 2022 considered the full terms of this agreement, and resolved (i) to accept the terms contained in this agreement, and (ii) to authorise _____ as its chairman, and _____ as its treasurer/secretary to sign this agreement on their behalf.
- P For the purposes of section 3 of the Bye-Laws, the Conservators have consented to use of the Hack Canter in the manner and at the times set out in this agreement.
- Q Save in respect of the closure of the Hack Ride, nothing in this agreement is intended to affect the statutory rights of all those using the Downs for all purposes, but subject to compliance with the Bye-Laws and the 1984 Act.

NOW THIS AGREEMENT PROVIDES AS FOLLOWS:

- 1 All Parties to this agreement agree that the JCR will hereafter provide and maintain the Hack Canter and that the Hack Ride should be permanently closed with no further maintenance required.
- 2 HBLB and JCR together agree that the Hack Canter may now be used for hack riding in the same manner and at the same times as the Hack Ride has to date been used for hack riding, and such use shall be confined to the period after noon each day only.
- 3 The BHS agree and accept (a) that the Hack Canter will be used by horse-riders only for the purposes of responsible hack riding and in the same manner and at the same times and on the same terms as the Hack Ride has to date been used for hack riding, and (b) that the Hack Ride may now be permanently closed, and (c) that there will be some occasions when the Hack Canter may be used before noon on any day by trainers licensed by the TGMB (and subject to that the TGMB waive any right that they may have had to exclusive use of the land now designated the Hack Canter for training purposes); and (d) that they will at all times

use reasonable endeavours to endorse observance by hack riders of the Bye-Laws so far as applicable to the Hack Canter, and generally to encourage all horse-riders to at all times ride responsibly.

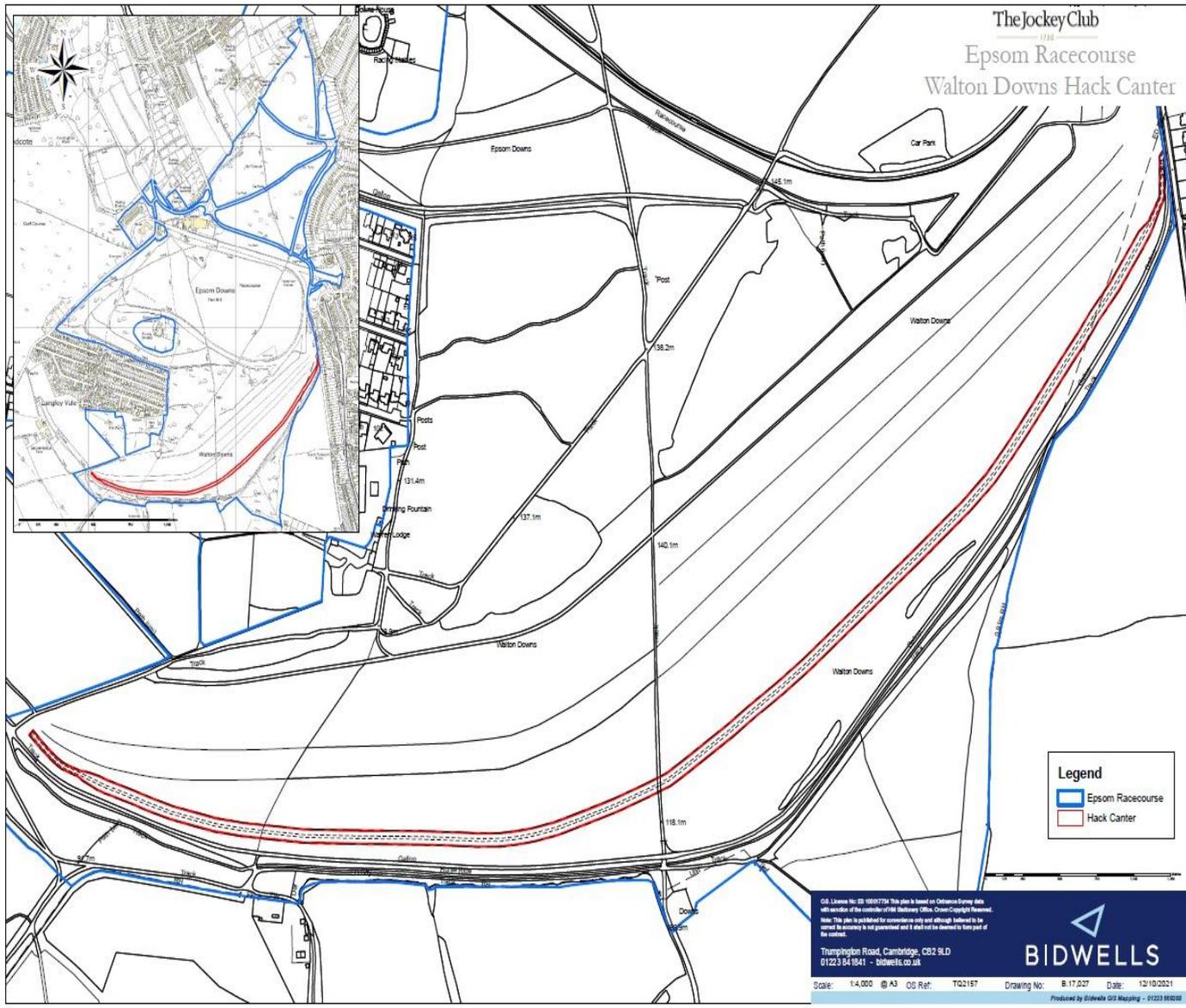
- 4 JCR together with the TGMB will use their best endeavours to ensure that the Hack Canter is kept open and in a suitable state (while allowing for the duration of any adverse weather conditions or necessary major repair works), and they will ensure that there is appropriate signposting for the benefit of members of the public and for the benefit of hack riders in the manner prescribed by section 15 (2) of the 1984 Act.
- 5 It is also agreed and accepted that JCR shall have the power (acting reasonably at all times) to temporarily close part or all of the Hack Canter at times of poor weather and/or unsuitable or unsafe ground conditions or in the case of any major repair works, and where at all possible (a) notice will be published of any planned closure, and (b) if the Hack Canter is unusable (or is likely to be unusable) for more than three days, they will use reasonable endeavours to locate and mark out a suitable temporary alternative ride.
- 6 It is accepted by all Parties to this agreement that the rights granted by the 1984 Act cannot strictly be overridden by any means other than a further enactment. Recognising the immense difficulty and delay that this would entail, recognising also the opportunity to provide better and more permanent facilities for hack riders, all parties to this agreement will treat the rights granted by this agreement, and the obligations entered into, as if they had been enshrined in statute; to the extent that the 1984 Act and the Bye-Laws and the Conservators' strategy for management and use of the Downs refer to the Hack Ride and the signed map, those will for future practicable purposes be construed where relevant as referring to the Hack Canter. All Parties acknowledge that the signing of this agreement will in practice bring an end to the HBLB Undertaking.
- 7 In order to avoid any possible further misunderstanding, and in addition to the publicising of these arrangements referred to at Recital K, the BHS and the Conservators and the Jockey Club will all publicise the closure of the Hack Ride and the availability of the Hack Canter for hack riding as widely as possible in local newspapers and equine journals, and on social media, and will use their best endeavours to ensure that the Council similarly publicise in Council publications and on Council noticeboards and that the TGMB similarly publicise to all its

members and those others using Walton Downs for training purposes.

- 8 JCR agree that if they shall at any time dispose of any relevant interest in the Downs, they will procure that any disponee will enter into an agreement (applicable to the interest disposed of) with the parties to this agreement in which they agree to perform all the functions and the obligations of JCR in this agreement, including procuring an agreement in the same terms from any disponee from them.
- 9 Any amendment to this agreement shall only be binding if made in writing and signed by an authorised representative of each of the parties.
- 10 If any provision of this agreement is held illegal, invalid or unenforceable such illegality, invalidity or unenforceability will not affect the other provisions of this agreement which will remain in full force and effect.
- 11 A failure to exercise or delay in exercising a right or remedy provided by this agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 12 Subject to the rights and responsibilities set out in the 1984 Act, this Agreement contains all the terms which the parties have agreed in relation to its subject matter, and supersedes any prior agreements, representations or understandings between the parties. None of the parties has entered into this Agreement wholly or partly in reliance on any warranty or representation not contained in it. If any such warranties or representations have been made, the parties irrevocably waive any claims or rights they may have in relation to them. This paragraph does not exclude any liability which one party would otherwise have to another in respect of any statements made fraudulently.
- 13 This agreement is personal to the parties and no party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement, with the exception that a party may, after having given prior written notice to the other parties, assign its rights under this Agreement to any person to which it transfers its business, provided that the assignee undertakes in writing to be bound by the assignor's obligations under this Agreement.

- 14 Nothing in this Agreement, and no action taken by either party pursuant to it, will be deemed to constitute a relationship between the parties of partnership, joint venture or agency and principal. None of the parties has, nor may represent that it has, any authority to act or make commitments on another party's behalf.
- 15 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this shall not affect any right or remedy of a third party which exists or is available apart from that Act.
- 16 In the event of any dispute arising out of or regarding this agreement the parties shall negotiate in good faith and shall, if necessary, escalate any such disagreement to the board of each organisation for resolution and/or seek the assistance of an independent mediator as appropriate. This shall be without prejudice to any party's right to seek injunctive relief through the courts if their legal rights would otherwise be jeopardised.
- 17 This Agreement may be executed in separate counterparts (and signature pages may be delivered by facsimile or email) all of which together evidence the same Agreement.
- 18 The terms of this Agreement shall be governed by English law, and each party submits to the exclusive jurisdiction of the English courts.

Schedule 1 – The Plan



In witness whereof this agreement has been entered into as a Deed on the day and year first above written

EXECUTED AS A DEED by:)
JOCKEY CLUB)
RACECOURSES LIMITED)

acting by a director and its)
secretary or by two directors)
)

Director

) Director/Secretary

EXECUTED AS A DEED by:)
THE HORSERACE BETTING)
LEVY BOARD)

acting by a director and its)
secretary or by two directors)
)

Director

) Director/Secretary

EXECUTED AS A DEED by:)
THE EPSOM AND WALTON)
DOWNS CONSERVATORS)

acting by a director and its)
secretary or by two directors)
)

Director

) Director/Secretary

EXECUTED AS A DEED by:)
[])
For and on behalf of THE)
EPSOM AND WALTON)
DOWNS TRAINING)
GROUNDS MANAGEMENT)
BOARD)

In the presence of:)

Witness signature: _____

Witness name: _____

Witness address: _____

Witness occupation:

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EXECUTED AS A DEED by:)

[])

For and on behalf of **THE**)

EPSOM AND WALTON)

DOWNS TRAINING)

GROUNDS MANAGEMENT)

BOARD

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In the presence of:)

Witness signature:

Witness name:

Witness address:

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Witness occupation:

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