

DATED 22nd March 2009

RAILTRACK PLC

- and -

HUMBER SEA TERMINAL LIMITED

Lease of Basement
at Killingholme

Ref: 14/RJW/3959-415203413/209723

Thomas Eggar Church Adams
Chatham Court
Lesbourne Road
Reigate
Surrey RH2 7FN

THIS LEASE OF EASEMENT is made the day of 2000
between RAILTRACK PLC whose registered office is situate at Railtrack House Euston
Square London NW1 2EE (1) "Railtrack" and HUMBER SEA TERMINAL LIMITED
whose registered office is situate at Priory House 60 Station Road Redhill Surrey RH1
2PE "the Owner"

IN THIS DEED

"The Property" means the land edged red on plan no 7814-1

"The Dominant Land" means the Property and such other additional land
within the area verged yellow on the plan no 7813-
1A and 7813-2A and notified from time to time to
Railtrack within the Perpetuity Period for so long as
such lands are used for the storage and distribution

of goods in connection with the port operation
known as the Humber Sea Terminal provided
always that the additional lands are at the time of
notification in the same ownership as the Property

"The First Servient Land" means the land hatched blue and lettered "A" on the
attached plan no 8427/2

"The Second Servient Land" means the land hatched blue and lettered "B" on the
attached plan no 8427/2

"The Servient Lands" mean the First and Second Servient Lands —

"The Perpetuity Period" means the period of 80 years from the date of this
deed which shall be the perpetuity period applicable

"The Level Crossing" means each level crossing on the Servient Lands
their decks and associated equipment (including
signaling equipment) as renewed and altered from
time to time but not the roads leading to them

"Service Ducts" means ducts for gas water electricity and
telecommunications services which are used wholly

and exclusively for providing those services to the Dominant Land and exclude any pipelines for the distribution of materials and liquids imported on to the Dominant Land and "Services" shall be construed accordingly

1 IN consideration of the sum of [REDACTED] together with VAT (the receipt whereof and hereby acknowledges) Railtrack hereby grants to the Owner and persons from time to time authorised by the Owner, the rights ("the Rights")

1.1 subject to the provisions of this deed to enter the Servient Land at its own expense so as to widen and improve either or both of the Level Crossings or the approach roads

1.2 at all times to pass and repass with or without vehicles along and over the Servient Lands for the purpose of gaining access to and egress from the Dominant Land

1.3 to install Service Ducts across the Servient Lands and thereafter to use the same for the supply of Services to the Dominant Land together with the right to enter the Servient Land in order to maintain repair renew or replace the Service Ducts subject to the later provisions of this Deed

PROVIDED THAT Railtrack may at any time on giving at least two months' written notice upgrade alter repair and renew either or both Level Crossings for the purpose of widening their railway or otherwise PROVIDED FURTHER THAT the carrying on of such work shall cause the minimum disruption to the Owner pursuant to clause 1.2 and the use of the Service Ducts in clause 1.3 above PROVIDED FURTHER THAT subject as provided above neither the execution of such work or any increase in the level of rail traffic shall be deemed to be a derogation from grant under this deed

TO HOLD TO THE OWNER for a term of 999 years from the date of this deed yielding and paying the yearly rent of [REDACTED] (if demanded)

2 THE Owner covenants with Railtrack as follows

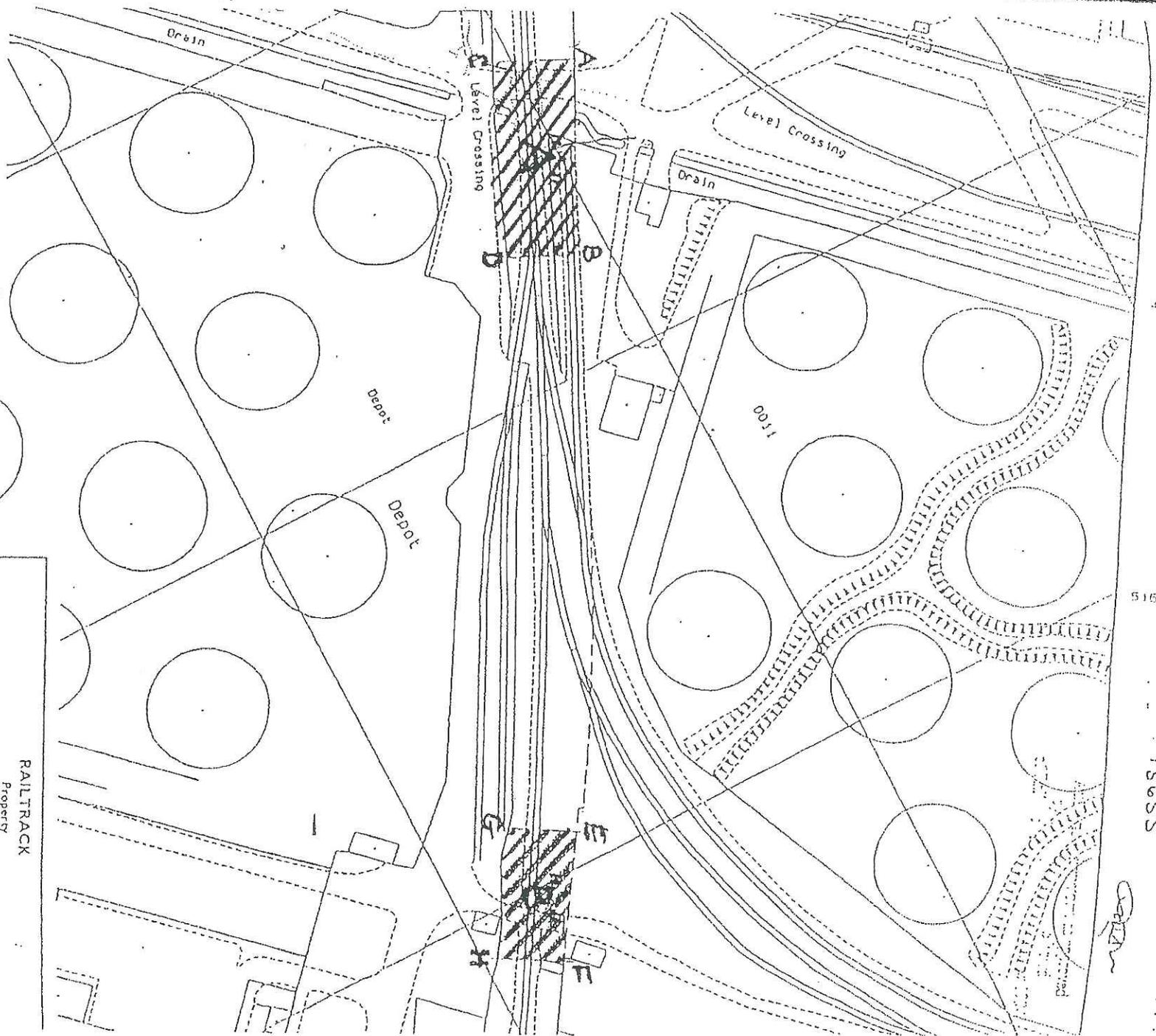
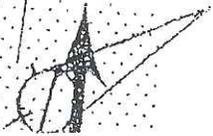
KILLINGHOLME

516100E

4202001

516100E

13655



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RAILTRACK
Property

Drawing Office and Land Records North, Manchester,
DX 716950 MANCHESTER ARENA 14

Plan No. 8427-2 Date 12-11-99
 Negative No. _____ Initials PJO
 Land Record No. 406 Scale 1:1250

Handwritten signature and initials: *HPVA* and *2/1*

- 2.1 Not to execute any works on or to the Level Crossings pursuant to the provisions of this Lease otherwise than in accordance with plans programmes and methods of work previously approved by Railtrack's engineer and level crossing manager such approval not to be unreasonably withheld, or delayed and comply with all statutory requirements and with the requirements of the railway inspectorate
- 2.2 At all times to exercise the rights hereby granted so as to give priority to rail traffic and to observe any reasonable requirements imposed by Railtrack or the railway inspectorate in the interests of safety
- 2.3 To pay to Railtrack on demand fifty per centum of its proper and reasonable cost of maintaining and repairing each Level Crossing for so long as the particular Level Crossing does not exceed 8 metres in width and one hundred per centum of such costs if a particular crossing is widened by the Owner so it exceeds 8 metres in width
- 2.4 To pay on demand one hundred per centum of the reasonable costs incurred by Railtrack in renewing upgrading or widening the Level Crossings consequent upon the widening of the railway or an increase in rail traffic or an increase in speeds of rail traffic on the railway in the vicinity of the Level Crossings
- 2.5 To erect and maintain fences between points A-B C-D E-F and G-H on the northern and southern boundaries of the Servient Lands on either side of the Level Crossing and to maintain the surface of the roads on the Servient Land leading to the Level Crossings in good repair and condition—
- 2.6 To indemnify Railtrack from and against all actions proceedings claims costs and demands whatsoever arising out of the rights granted to the Owner pursuant to Clause 1 save to the extent that such claims arise out of the negligence of Railtrack or any train operator
- 2.7 Not to use the Level Crossings for the passage of abnormal loads (which would not normally use a public highway) without prior notification to the police and without notifying Railtrack's Level Crossing's Manager

2.8 To comply with all reasonable regulations prescribed by Railtrack or the railway inspectorate for the use and operation of the Level Crossings

2.9 Not to permit the Level Crossings to be used by any vehicle type which might in the reasonable opinion of Railtrack cause or be likely to cause material damage to the Level Crossing

3 IF the Owner shall be in material breach of any provisions of this deed Railtrack may terminate this Lease by 28 days notice in writing given to expire at any time.

4 RAILTRACK

a) agrees to keep the Level Crossing in good and serviceable repair and condition

b) agrees to use their reasonable endeavours to assist in any application to the Chief Land Registrar for the noting of the rights on the titles benefited by it

c) acknowledges the right of the Owner to the production and delivery of copies of the documents listed in the schedule to this deed and undertakes safe custody thereof

5 IT is hereby certified that the transaction hereby effected does not form part of a larger transaction or a series of transactions where the amount or value or the aggregate amount or value of the consideration exceeds [REDACTED]

EXECUTED as a Deed by RAILTRACK PLC and the Owner:

RAILTRACK PLC)
THE COMMON SEAL of)
RAILTRACK PLC)
was affixed in the presence of)
[REDACTED]

2d signatory as approved
in resolution of the Board
of Directors of RAILTRACK
PLC on 25.5.2011

SCHEDULE

- 1 A Conveyance made the 8th December 1899 between EARL OF YARBOROUGH (1) and the BARTON AND IMMINGHAM LIGHT RAILWAY COMPANY (2)
- 2 A Conveyance made the 21st April 1910 between MARY JANE HOLLTON (1) and the BARTON AND IMMINGHAM LIGHT RAILWAY COMPANY (2)
- 3 A Conveyance made the 7th January 1910 between G & J EARLE LIMITED (1) and the BARTON AND IMMINGHAM LIGHT RAILWAY COMPANY (2)

DATED 5 May 2007

NETWORK RAIL INFRASTRUCTURE LIMITED (1)

and

HUMBER SEA TERMINAL LIMITED (2)

LEASE OF EASEMENT
at Killingholme

For a term of 999 years
Rent 

WE HEREBY CERTIFY
THIS TO BE A TRUE AND
ACCURATE COPY OF
THE ORIGINAL
Herbert Smith LLP
HERBERT SMITH LLP
Exchange House
Palmrose Street
London EC2A 2HS
Date: 30.07.2007

ADDLESHAW GODDARD

PARTICULARS

Date:

5 July 2007

Network Rail:

NETWORK RAIL INFRASTRUCTURE LIMITED (company registration number 2904587) whose registered office is at 40 Melton Street London NW1 2EE

the Grantee:

HUMBER SEA TERMINAL LIMITED (company registration no. 0278815) whose registered office is at Clough Lane North Killingholme North Lincolnshire DN40 3LX

Rights:

the right to construct and lay the Works in and under Network Rail's Property or works in the approximate position(s) indicated by the blue hatching on the Plan and to retain, use, maintain, repair, test, inspect, renew and remove them for the Permitted Use

Works:

the works detailed in the Third Schedule to this Lease including any control or ancillary apparatus and any wrapping, sleeving or protective or other works or equipment as may be specified in the Third Schedule and any incidental works as are reasonably and properly required by Network Rail or any works substituted under the provisions of this Lease

Plan:

the plan (no. 35463) attached to this Lease

Permitted Use:

solely for surface water drainage for the benefit of the Grantee's Premises but for no other purpose whatsoever

Premium:

 together with Value Added Tax thereon

the Grantee's Premises:

the premises presently belonging to the Grantee situated at Killingholme North Lincolnshire and known as the Humber Sea Terminal as shown hatched pink and blue on the attached plan labelled Plan No. 2 and registered with the Land Registry under Title Numbers HS313748, HS236163, HS315330 and HS262394

Rent:

the annual sum 

Start Date:

5 July 2007

Term:

the term of 999 years beginning on the Start Date

THIS LEASE is made between Network Rail and the Grantee

1 DEFINITIONS

In this Lease:

1.1 The following words and expressions shall where the context so admits have the following meanings:

- (a) "Network Rail": shall include successors in title and assigns of Network Rail Infrastructure Limited
- (b) "the Grantee": shall include its successors in title and assigns all persons deriving title under or ~~from~~ the Grantee or such successors or assigns ^{from}
- (c) "the Engineering Conditions": the conditions as are set out in the Fourth Schedule to this Lease and such conditions as Network Rail's Engineer may properly require for the safety, protection or operation of Network Rail's railway, property or works as are notified to the Grantee in writing from time to time
- (d) "the Rights Conditions": the conditions set out in the First Schedule to this Lease
- (e) "CDM Regulations": the Construction (Design and Management) Regulations ~~1994~~ ²⁰⁰⁷ LC
- (f) "Health and Safety File": any health and safety file required to be prepared pursuant to the CDM Regulations
- (g) "Basic Interest Rate": the base lending rate from time to time of HSBC Bank plc. But if the base lending rate of HSBC Bank plc shall at any time cease to exist or be ascertainable, then Network Rail may substitute for it the base lending rate of such one of the London Clearing Banks as Network Rail shall prescribe in writing

(h) "Network Rail's Engineer": the person employed by Network Rail holding responsibility for that function being Network Rail Territory Infrastructure Protection Manager of Toft Green, York YO1 1HP or such other person as Network Rail may appoint for this purpose

(i) "Perpetuity Period": the period of 80 years from the date of this Lease and shall be the perpetuity period applicable to this Lease

1.2 Save as otherwise stated any reference to a clause or Schedule shall be to a clause or Schedule of this Lease and any reference to the Particulars shall be to the Particulars of this Lease

1.3 Words and expressions in this Lease shall subject to clause 1.1 have the meanings given to such words and expressions by this Lease unless such meanings are inconsistent with the terms and provisions of this Lease

1.4 The terms defined in the Particulars shall have the meanings specified there (subject to any amplification set out in this clause 1)

2 INTERPRETATIONS

2.1 This Lease is to be interpreted as follows:

(a) References to the "end of the Term" are references to the actual ending, whenever and howsoever it comes to an end.

(b) Words which refer to males also refer to females, and to companies.

(c) Where the Grantee is more than one person, their obligations can be enforced against all of them jointly and against each individually

(d) Where an Act of Parliament, or a section of it, is referred to, this includes any amendment to that Act or section, and the version of an Act which is current at any particular time will apply. This applies to anything made under an Act of Parliament.

(e) References to value added tax shall include any tax of a similar nature that may be substituted for or added to it.

(f) The Grantee's obligations under this Lease shall be treated as including a requirement that the Grantee is also to procure that the Grantee's employees and agents and any other persons under its control do and omit to do nothing which, if done or omitted by the Grantee, would constitute a breach of those obligations.

3 GRANT OF LEASE

In consideration of the Premium (the receipt hereof is acknowledged) the rent reserved and the covenants and conditions on the part of the Grantee contained in this Lease, Network Rail with full title guarantee grants the Rights to the Grantee for the Term solely for the benefit of the Grantee's Premises at the Rent. The Rent is payable on and from the date hereof annually in advance in every year (if demanded)

4 RIGHTS AND OTHER MATTERS

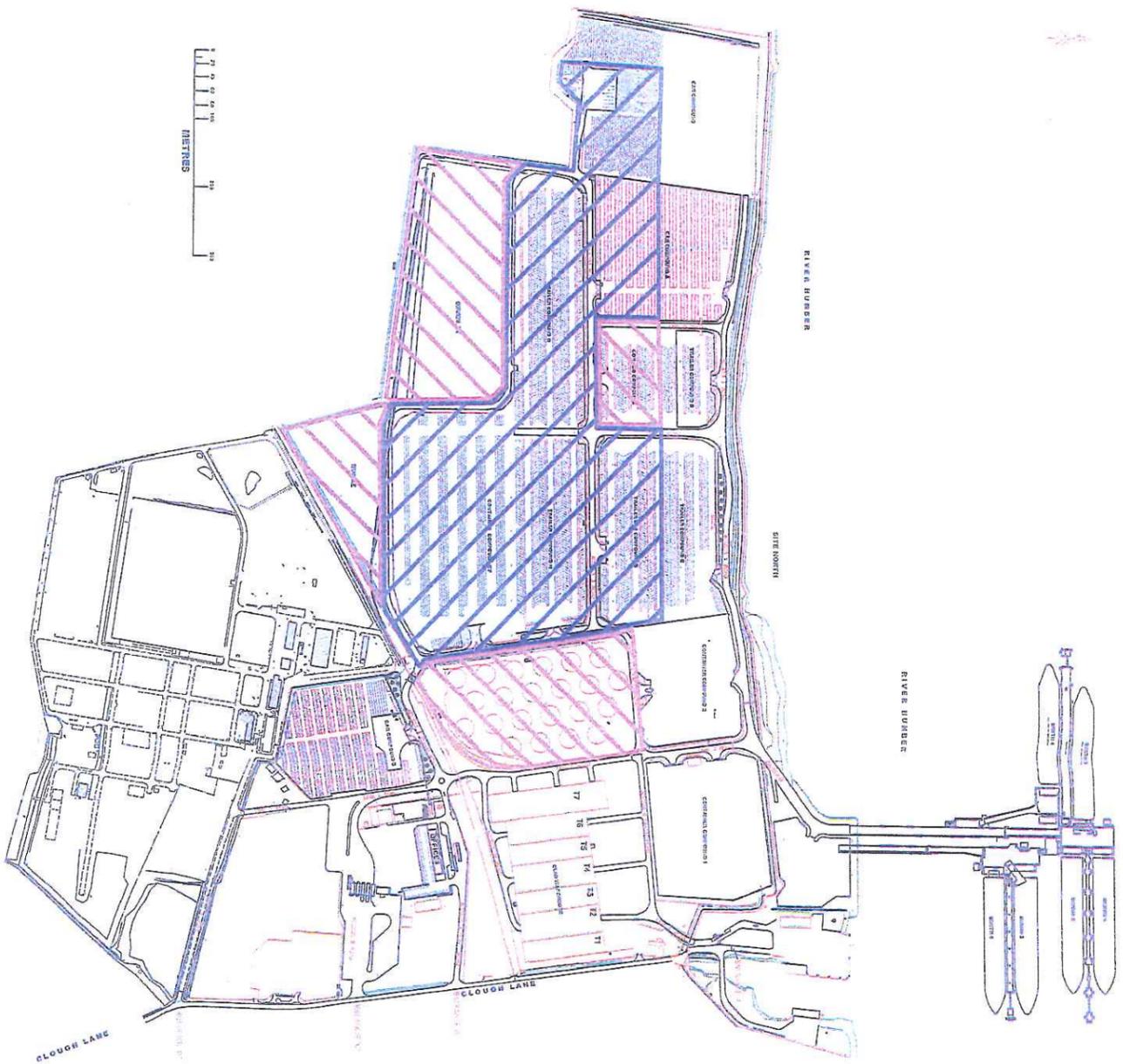
The grant of this Lease is on the following basis.

4.1 There are excepted and reserved out of this Lease to Network Rail and all persons claiming under or permitted by Network Rail or any other person for the time being so entitled the rights set out in the Second Schedule to this Lease

4.2 It is granted subject to any rights, reservations, privileges, covenants, restrictions, stipulations and other matters of whatever nature affecting the Rights or the Works so far as any of them relate to the Rights or the Works and are still subsisting and capable of taking effect

5 THE GRANTEE'S COVENANTS

The Grantee covenants with Network Rail as follows.



Key:

DEVELOPED LAND

LAND FOR DEVELOPMENT

LAND AREA MARKED DRAINS NORTH TO SOUTH

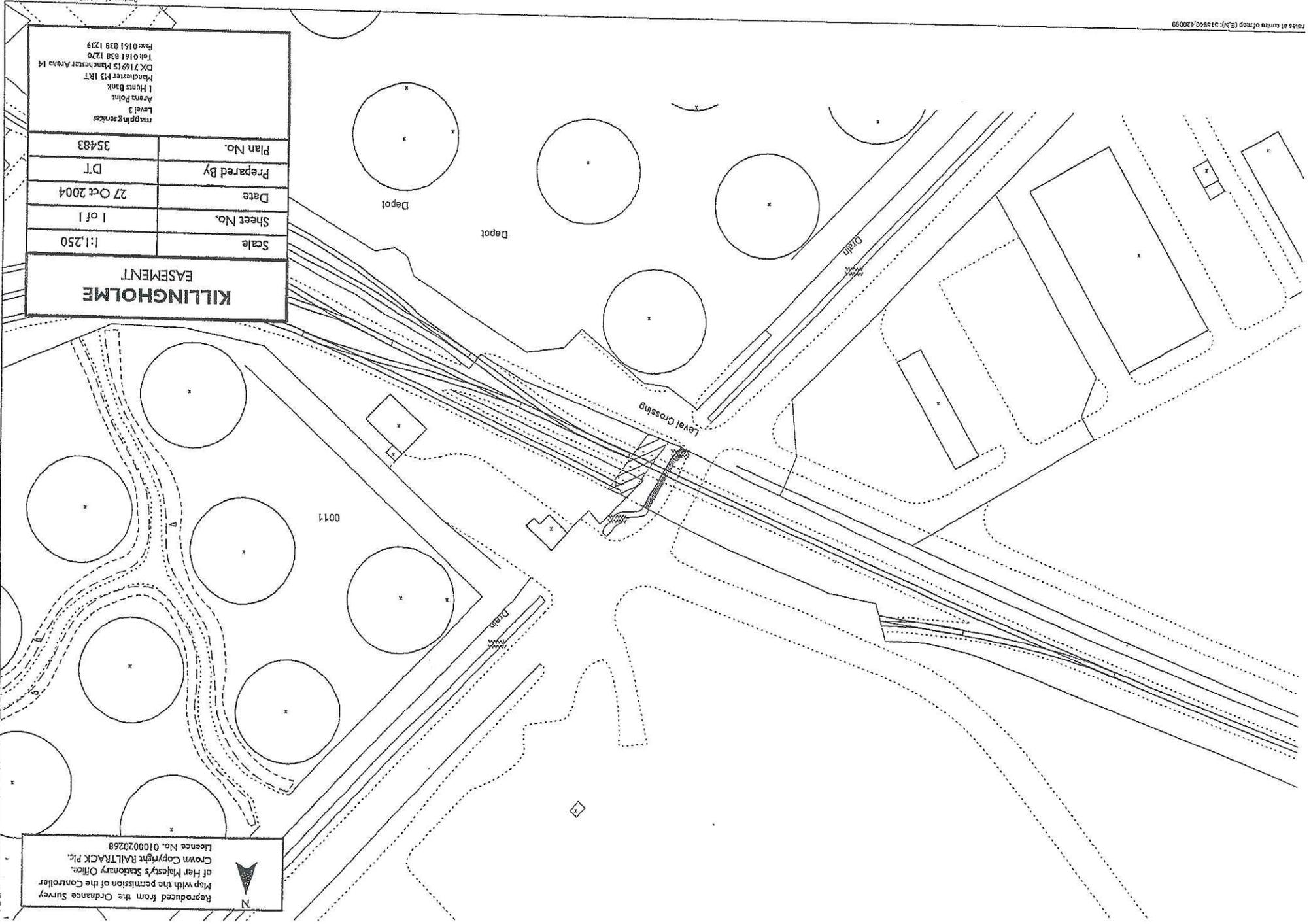
Plan No 2



KILLINGHOLME EASEMENT

Scale	1:1,250
Sheet No.	1 of 1
Date	27 Oct 2004
Prepared By	DT
Plan No.	35483

Mapping services
Level 3
Arens Point
1 Hunts Bank
Manchester M13 1RT
DX 7169 15 Manchester Arena Rd
Tel: 0161 838 1270
Fax: 0161 838 1239



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5.4 Conditions

In so far as their exercise is not governed by the Engineering Conditions to exercise the Rights in accordance with the Rights Conditions and in case of any inconsistency or conflict the Engineering Conditions take priority over the Rights Conditions.

5.5 Permissions

To obtain all necessary consents and approvals under all relevant legislation including (without limitation) the Town and Country Planning Acts and Environmental Protection Acts in exercise of the Rights and to comply with all the conditions of such consents and approvals and if reasonably requested by Network Rail to provide Network Rail with copies of any consents or approvals. The Grantee shall at all times keep Network Rail indemnified against all costs claims liabilities and expenses (if any) which it might incur in connection with compliance by the Grantee with this covenant.

5.6 Notices

As soon as reasonably practicable following receipt of any notice, order, direction, licence, consent or permission from a local authority, governmental or similar body relating to the Works or the use of the Works to give full particulars to Network Rail

5.7 Indicators

If Network Rail so requires:

- (a) to fix and maintain such Indicators as may be agreed between the parties or in default of agreement as may be required by Network Rail's Engineer for the purpose of indicating the position and direction of the Works.
- (b) to provide the means to cut off the supply through the Works in the event of emergency affecting Network Rail's property or works and to provide Network Rail's Engineer with the name, designation and telephone number of the person

5.1 To pay rent

If demanded to pay to Network Rail the Rent at the times and in the manner provided in this Lease

5.2 To pay outgoings

To pay all existing and future rates, duties, charges, assessments and outgoings whatsoever imposed or charged upon the Works or upon Network Rail or upon the Grantee in respect of them or payable by either in respect of them and if the Works are not separately assessed and Network Rail is liable to pay then the Grantee shall pay to Network Rail such proportion of them as may be fixed or agreed with the Grantee from time to time by Network Rail's Surveyor acting properly

5.3 Installation and Maintenance of the Works

- (a) To the extent that this has not been done at the date of this Lease to construct with all due despatch and afterwards maintain the Works in accordance (where applicable) with the Engineering Conditions and/or the Rights Conditions and to the proper and reasonable satisfaction of Network Rail's Engineer.
- (b) To give to Network Rail's Engineer the period of notice required by the Engineering Conditions and/or the Rights Conditions in writing prior to commencement of any works connected with the use, maintenance, repair, testing, inspection, renewal or removal of the Works and to carry out such works during such times of the day and night as Network Rail's Engineer may reasonably require and in accordance (where applicable) with the Engineering Conditions and/or the Rights Conditions.
- (c) To comply with the Engineering Conditions if any such provisions are set out in the Fourth Schedule to this Lease.

to be contacted in the event of such action being necessary PROVIDED ALWAYS that in the event that the supply is cut-off the cut-off will be for as short a period as reasonably necessary

5.8 Alterations

Except as required by the Health and Safety Executive or clause 6.5 of this Lease or permitted by the Rights no alterations or additions shall be made to the Works other than in connection with routine repair or maintenance and otherwise than in accordance (where applicable) with the Engineering Conditions and/or the Rights Conditions and /or the Special Conditions

5.9 Use

- (a) Not to use the Works otherwise than as and for the Permitted Use
- (b) Not to discharge or permit to be discharged through or (where appropriate) convey or permit to be conveyed by the Works anything in excess of that which the Works are designed to carry
- (c) Not to permit to be discharged from the Works
 - (i) any deleterious, objectionable, dangerous or explosive matter or substance
 - (ii) any fluid of a poisonous or noxious nature which if it escaped would contaminate or pollute ground water or the water of any stream or river
- (d) Not to apply cathodic or similar means of protection to the Works save insofar as specified in the Engineering Conditions

5.10 Statutory requirements

- (a) Without expense to Network Rail, the Grantee is to comply with and ensure compliance with any requirements which may be properly made under any

present or future Act of Parliament or the bye-laws and regulations of any local authority, governmental or similar body in relation to the use of the Works or exercise of the Rights (whether required of Network Rail, the Grantee or any other person). The Grantee shall at all times keep Network Rail indemnified against all costs claims liabilities and expenses (if any) which it might incur in connection with compliance by the Grantee with this contract.

(b) Without prejudice to the generality of this, the Grantee is to comply in all respects with the provisions of the CDM Regulations whenever they shall apply to any works carried out on or in relation to the Works other than by Network Rail

(c) The Grantee acknowledges and declares that Network Rail will not be acting as the client in respect of any such works for the purpose of the CDM Regulations.

(d) The Grantee shall procure that the Health and Safety Executive will be notified of such works in accordance with the CDM Regulations, including (without limitation) notice of the person who is acting as the client in respect of such works and the Grantee shall supply to Network Rail a copy of such notice.

(e) The Grantee is to maintain the Health and Safety File in relation to such works, and update it as necessary, whenever any such further works are carried out, and in any event, immediately upon being required to do so by Network Rail from time to time.

(f) At the Grantee's own cost, the Grantee is to make available the Health and Safety File in relation to such works for inspection from time to time by Network Rail and those authorised by Network Rail, and is to supply to Network Rail on request a copy of the Health and Safety File.

(g) At the end of the Term, the Grantee shall deliver to Network Rail all Health and Safety Files relating to the Works which are or which ought to be held by the Grantee and is to deliver them to any permitted assignee of this Lease on completion of an assignment.

5.11 Repair

- (a) The Grantee is to keep the Works and every part of them in good and substantial repair and condition (and, if appropriate, properly jointed) to the satisfaction of Network Rail's Engineer
- (b) If required by Network Rail so to do but in any event not less frequently than once in every five years the Grantee shall at its own expense carry out regular detailed inspections (if necessary by CCTV survey) of any pipes or ducts forming part of the Works and to produce a copy of such survey to Network Rail. The Grantee shall immediately carry out any repair or maintenance then found to be wanting or properly required by Network Rail. Such repair or maintenance is to be undertaken in accordance with the provisions of this Lease.

5.12 Network Rail's Works

For the purposes of enabling Network Rail to exercise the rights reserved in paragraph 1.2 of the Second Schedule to this Lease and subject to Network Rail providing suitable temporary or permanent alternative locations for the Works to allow the continued exercise of the Rights or equipment rights in respect of Works in such alternative location the Grantee further covenants with Network Rail as follows and causing as little disruption to the Grantee as reasonably possible:

- (a) at its own cost to cease operating or to cut off the supply through the Works for such duration as Network Rail may properly require
- (b) at its own cost to remove or to divert (either temporarily or permanently) or to strengthen the Works at the proper request of Network Rail or (as applicable) to pay the proper sums due if Network Rail agrees with the Grantee to carry out such works
- (c) any such alteration, removal, diversion, or making safe executed by the Grantee shall be carried out in accordance with the provisions of this Lease.

- (d) if the Grantee fails to carry out such alteration, removal, diversion or making safe within a reasonable time after written notice served on it by Network Rail then the Grantee shall be liable to reimburse Network Rail in respect of any proper expense, loss or damage howsoever arising and any additional works resulting from such delay after the expiry of such notice

5.13 Yielding up

At the end of the Term, the Grantee is quietly and peaceably to relinquish the Rights having first and in accordance with the provisions of this Lease made safe the Works and having made good to the satisfaction of Network Rail the site of the Works to its original condition and all damage occasioned to Network Rail's Property or works by or in such removal

5.14 Public Liability

- (a) The Grantee is to insure and keep insured at the Grantee's own expense with insurers of repute in respect of all public liability risks or damage or injury suffered (whether by Network Rail or any third party including any consequential loss) arising in the exercise of the Rights or use of the Works or from any failure or defect in the Works in a sufficient sum which shall be not less than  *At least 1000000*
- (b) The proceeds of this insurance shall be applied to the relevant claim or liability (including any indemnity given to Network Rail under this Lease) and the Grantee will pay any shortfall in the amount required to satisfy the claim or liability and will indemnify Network Rail in respect of any deficiency in this insurance or failure to obtain it.
- (c) On reasonable written request from Network Rail to provide details of public liability insurance and evidence of payment of the current premium.
- (d) If the Grantee shall at any time fail to insure in accordance with these requirements Network Rail may insure instead and any related costs incurred shall be repaid by the Grantee to Network Rail on demand
- (e) To observe and perform the conditions of the insurance policy

5.15 Dealings with this Lease

- (a) The Grantee is not at any time during the Term to assign any part less than the whole of this Lease.
- (b) Not to assign this Lease or the Rights other than to the Grantee's successors in title to the Grantee's Premises. Provided always that upon any assignment the assignee shall forthwith deliver to Network Rail a deed of covenant in favour of Network Rail that it will observe and perform the Grantee's covenants and obligations in this Lease.

5.16 Excavations, danger and nuisance

- (a) That in the exercise of the Rights (save where this is permitted in the Engineering Conditions) no earth, clay or other substance shall be excavated, and no act shall be done which may endanger the safety or stability of Network Rail's railway, property or works or of any neighbouring property.
- (b) Nothing shall remain or be done (in connection with the use of the Works or exercise of the Rights) on Network Rail's Property which may be or become or grow to be a public or private nuisance or a danger or disturbance to Network Rail or its tenants, licensees, contractors, access beneficiaries, traders or railway users or to neighbouring property or persons.
- (c) There shall not in connection with the exercise of the Rights be obstructed any roads or footpaths.

5.17 Contamination

- (a) The Grantee is not to allow any substances or materials discharged through or carried by the Works to leak or seep into or come onto Network Rail's property or works or any adjoining or neighbouring land and is to take all necessary steps to prevent any such leaking and seepage.

- (b) In the event of any bursting, leaking or spillage immediately to carry out any work of clean up, restoration and/or containment and to indemnify Network Rail against any related liability.
- (c) The Grantee is to permit Network Rail or its agents at all reasonable times on prior written notice to have access to the Works for the purposes of inspection or testing and to carry out such works of remediation as are required by Network Rail to remedy any breach of this clause.
- (d) If the Grantee fails to comply Network Rail may elect to carry out those works itself and the Grantee shall without prejudice to any other right or remedy of Network Rail pay to Network Rail within a reasonable period of demand Network Rail's proper costs of and in connection with this
- (e) The Grantee is upon request to afford to Network Rail all reasonable assistance in identifying the contaminative consequences of any failure of the Works. Without prejudice to the Grantee's obligations in this clause, the Grantee shall also, at no cost to Network Rail, comply with all reasonable requests made by Network Rail for minimising the risk of contamination.

5.18 Indemnities

The Grantee shall be responsible for and keep Network Rail indemnified against all actions, damage, losses, costs, expenses, claims, fines and liability suffered by Network Rail arising directly or indirectly out of any failure by the Grantee to comply with any of the terms of this Lease or any act, omission or negligence in relation to this Lease or in the exercise of the Rights by the Grantee or any persons expressly or impliedly with the Grantee's authority or under the Grantee's control

5.19 Costs

The Grantee is to pay to Network Rail all costs, charges and expenses (including legal costs and surveyors' fees) which may be incurred by Network Rail of and incidental to:

- (a) preparing and serving all notices and schedules relating to lack of repair to the Works and agreeing such schedules with the Grantee and supervising (if Network Rail requires) the works needed to remedy such lack of repair and any other works which may be carried out to the Works;
- (b) any application under this Lease by the Grantee for consent or approval, whether or not it is given;
- (c) the recovery of any sums due under this Lease, including the levy or attempted levy of distress

6 LEASE CONDITIONS

This Lease is granted on the following conditions.

6.1 Forfeiture

This Lease may be ended by Network Rail forfeiting it. This shall be without prejudice to any of Network Rail's rights then subsisting.

6.2 Value Added Tax

- (a) Where under this Lease the Grantee is to pay any specific sum to Network Rail, such sum shall be regarded as being exclusive of value added tax (without prejudice as follows)
- (b) The Grantee's obligations under this Lease shall be treated as requiring payment to Network Rail of value added tax chargeable in respect of any rent or other payment made by or taxable supply received by the Grantee under the terms of or in connection with this Lease
- (c) Where the Grantee has agreed to reimburse Network Rail in respect of any payment made by Network Rail under the terms of or in connection with this Lease and the subject matter of the payment does not constitute a taxable supply to which the preceding clause applies, then the Grantee shall also

reimburse any value added tax paid by Network Rail on such payment to the extent that it is not recovered by Network Rail

6.3 Arbitration

All disputes and differences relating to this Lease where in the opinion of Network Rail's Engineer the safety of Network Rail's railway may be affected shall be decided by Network Rail's Engineer but all other disputes and differences arising under this Lease shall be settled by a single arbitrator under the Arbitration Act 1996. Network Rail and the Grantee may agree the appointment of an arbitrator, or either or both of them may apply to the President for the time being or other appropriate officer of the Royal Institution of Chartered Surveyors.

6.4 Sums due

Any sum due to Network Rail from the Grantee under this Lease shall (whether or not reserved as rent) be recoverable at the option of Network Rail as though it were rent in arrears.

6.5 Network Rail's works

(a) Network Rail may at any time construct or erect any works that it may deem necessary over, under or adjoining the Works and raise, widen or alter its railway or works without payment of any compensation to the Grantee and without being liable for any damage so caused to the Works

(b) Network Rail may carry out or complete (to such extent as Network Rail's Engineer may deem properly necessary) any works as to which the Grantee shall be in default or may take whatever action Network Rail's Engineer considers necessary to safeguard Network Rail's interests where Network Rail's Engineer considers the safety of the railway to be at risk (as to the existence of which situation the decision of Network Rail's Engineer shall be final) but

(i) the proper cost incurred by Network Rail in such works (as certified by Network Rail's Engineer) shall be repaid by the Grantee to Network Rail on demand and

- (ii) except in case of emergency or where Network Rail's Engineer so considers the safety of the railway to be at risk Network Rail shall before so acting give notice to the Grantee to remedy its default (if capable of remedy) and afford the Grantee such period of time as may be specified in Network Rail's Engineer's notice from the giving of notice to complete remedial action

PROVIDED ALWAYS that the exercise of Network Rail's right under this clause shall nevertheless be subject to Network Rail causing as little disruption and inconvenience as reasonably possible.

(c)

- (i) On the date hereof the Grantee shall pay the sum of [REDACTED] Deposit to Network Rail
- (ii) Network Rail will hold the Deposit as security (but not on trust) in an interest bearing account against any default by the Grantee in the Grantee's obligation under this Lease
- (iii) Network Rail may take enough money from the Deposit to compensate it for costs incurred by Network Rail as a result of such default and in carrying out works to remedy the same
- (iv) upon expiration or sooner determination of the Term Network Rail shall forthwith return the Deposit (together with all interest accruing thereon) but less any withdrawals made pursuant to clause 6.5(c)(ii) hereof)

6.6 Declaration and Agreement

- (a) Nothing in this Lease shall render Network Rail liable to maintain its property or works
- (b) Nothing in this Lease shall prevent Network Rail from:

- (i) removing or filling in any bridge, viaduct or culvert or other works (other than the Works), or
 - (ii) installing any necessary services, pipes, drains, wires or cables or carrying on normal railway operations including fencing, hedging and ditching or the management of line side vegetation by burning and felling
- (c) Nothing in this Lease shall afford the Grantee a right of lateral or subjacent support for the Works or render Network Rail liable for any damage to the Works which may happen through any slip or settlement of Network Rail's land or by the carrying on of Network Rail's undertaking
- (d) No person shall enter Network Rail's property by virtue of the Rights otherwise than at his own risk and otherwise than subject to the Engineering Conditions and the Rights Conditions
- (e) Nothing in this Lease shall confer on the Grantee any right to the benefit of or to enforce any covenant or agreement contained in any other instrument relating to any property or affect the right of Network Rail to deal with it now or at any time as Network Rail may think fit.
- (f) All rights not specifically and expressly included in the Rights are reserved to Network Rail
- (g) It is agreed that the Rights shall be exercisable only if they or their subject matter shall come into existence within the Perpetuity Period

6.7 Perpetuity

Although some of the Network Rail's rights under this Lease may be expressed to be limited in their exercise to the Perpetuity Period, this Lease shall nevertheless be treated so as to enable their exercise at all times during the Term (including outside the Perpetuity Period) to the extent that the law now or at the relevant time permits.

7 NETWORK RAIL'S COVENANTS

Network Rail covenants with the Grantee that as long as the Grantee complies with all the Grantee's obligations in this Lease the Grantee shall peaceably hold and enjoy the Rights without any disturbance or interruption by Network Rail or any person or persons rightfully claiming through, under or in trust for it. But neither the carrying on by Network Rail of its undertaking on its property in exercise of and subject to its statutory and common law obligations, nor the grant by Network Rail of any permission properly given to use railway facilities, nor the exercise of the rights reserved to Network Rail under this Lease in accordance with its terms shall be treated as a breach of this covenant or in derogation from Network Rail's grant.

8 LEASE AND SPECIAL CONDITIONS

8.1 This Lease incorporates and is subject to:

- (a) the Particulars and
- (b) the Engineering Conditions
- (c) In the case of conflict between the Engineering Conditions and the other provisions of this Lease the Engineering Conditions take priority over the other provisions of this Lease

9 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

This Lease gives no rights under the Contract (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act

10 NOTICES

10.1 Any notice in writing that under the terms of this Lease is to be given to Network Rail shall be treated as effectively served if and only if addressed to Network Rail and served by recorded delivery or registered post upon Network Rail at present located at 40 Melton Street, London NW1 2EE. Or this shall be upon such other person at such address as Network Rail may from time to time appoint instead for that purpose.

10.2 Any notice in writing that is to be given by Network Rail to the Grantee shall be treated as effectively served if sent through the post by the recorded delivery service or in a registered letter addressed to the Grantee's Secretary at the Grantee's registered office.

11 CERTIFICATE

This Lease is a new tenancy within the meaning of Section 1 of the Landlord and Tenant (Covenants) Act 1995

THIS LEASE has been executed by the parties as a deed as first dated above

THE FIRST SCHEDULE
RIGHTS CONDITIONS

- 1 Exercise by the Grantee of any of the Rights entailing access or entry onto Network Rail's Property or the carrying out of any works which may affect Network Rail's property or works shall:
 - 1.1 be subject to
 - 1.1.1 the prior written approval of Network Rail's Engineer and
 - 1.1.2 the Grantee pre-planning any such entry as long as reasonably possible beforehand so as to enable any necessary railway possessions to be obtained with minimum inconvenience to railway operations and submitting for approval detailed plans, drawings, sections and specifications, programme of work and method statement to Network Rail's Engineer, and
 - 1.2 be exercised so as to cause as little damage, disturbance or injury as practicable and so as to occasion the minimum inconvenience and disturbance to Network Rail its tenants, licensees, contractors, access beneficiaries, traders and railway users and the Grantee shall make good at its own expense as soon as is practicable to the reasonable satisfaction of Network Rail any damage, disturbance or injury caused to Network Rail's Property or works.
 - 1.3 (where appropriate) be subject to the Engineering Conditions and adherence to all safety requirements for Network Rail's railway or any works taking place on Network Rail's property including adherence to railway industry safety standards and safety validation of contractors employed.

THE SECOND SCHEDULE
NETWORK RAIL'S RIGHTS

- 1 The grant of this Lease is on the following basis
- 1.1 Except as expressly granted by the Rights it excludes any right of support from mines and minerals or from any subsoil or substrata or from Network Rail's property or works
- 1.2 It is subject to the exception and reservation of these rights to Network Rail and all persons claiming under or permitted by it or any other person for the time being entitled
- 1.2.1 the right to carry out any works alongside, over or under the site of the Works which may in the opinion of Network Rail be necessary either for the proper operation of Network Rail's undertaking including widening or altering the railway, or for carrying out works of demolition, reconstruction or redevelopment or otherwise or for doing anything which may be required to preserve or protect life or property.
- 1.2.2 the right to place on, fix or attach to the Works any works or service media which may be necessary or convenient and to use and maintain them provided always that such works or service media do not interfere with the Grantee's use of the Works and the Works have sufficient capacity to facilitate such fixing or attachment
- 1.2.3 the right at any time to stop up or otherwise affect any rights of way or other rights or privileges (whether now in existence or not) which the Grantee may at any time during the Term be using or enjoying, over any neighbouring land of Network Rail. But this does not apply to any use or enjoyment by virtue of the express provisions of this Lease or of any separate grant or licence in writing from Network Rail.
- 1.2.4 a right of support from the Works for Network Rail's property and works.
- 1.2.5 the right to carry out the works mentioned in clause 6.5 of this Lease

THE THIRD SCHEDULE

THE WORKS

- 1 Infilling grouting solid and placing beyond use the existing culvert within Network Rail land shown coloured red on the Plan
- 2 Installation of 3 x 1200mm diameter pipes within the Network Rail land shown hatched blue on the Plan

all such works to be carried out in accordance with a scheme proposed by the Grantee and approved in writing by Network Rail and in accordance with Drawing 46581/LD/5411 Revision A annexed hereto

Note: Site "H" not at present.

THE FOURTH SCHEDULE
THE ENGINEERING CONDITIONS

GENERAL ENGINEERING REQUIREMENTS IN RESPECT OF UNDERTRACK CROSSING
OF THE OPERATIONAL RAILWAY

ISSUED IN CONNECTION WITH:

KILLINGHOLME: NEW CULVERTED DRAIN @ 2M 40C (YORKSHIRE TAR)

To facilitate progression of the scheme pending completion of the wayleave, listed below are Network Rail's general requirements for enabling an undertrack crossing to be installed safely under the operational railway. Not all of the following will be applicable to every scheme and discussion will be required to determine scheme specific requirements. It may also be practicable to dispense with some of the requirements depending on proposed methods of working:

- 1 Works to be carried out in accordance with Railway Group Standards GI/RT7008 "Pipelines, Buried Services and Undertrack Crossings", CC/RT5112 "Loading Requirements for the Design of Bridges" and GC/RT5101 "Technical Approval Requirements for Changes to the Infrastructure" and Network Rail Company Standard RT/CE/S/044 "Undertrack Crossings".
- 2 The Undertrack crossing is to be a minimum of 1.2m below rail level and at right angles to the railway tracks. Any dispensation to this depth is to be agreed with Asset Protection Engineer.
- 3 The Grantee is to provide geotechnical details of the site on both sides of and relative to the railway. All levels must relate to rail levels.
- 4 The Grantee is to provide a cross sectional drawing showing the position of the pipeline relative to rail level. There is to be no access to Network Rail land for surveying works unless Network Rail's safety requirements are complied with.

- 5 Where applicable, i.e water/gas mains, the Grantee is to provide stop valves either side of the railway, adjacent to the railway boundary and sited on private land, and provide emergency contact details to Network Rail.
- 6 It may be necessary for Network Rail to undertake a service investigation of the site to determine the location and depth of any Network Rail owned plant and equipment. Associated costs are to be borne by the Proposer.
- 7 The centre line of undertrack crossing must be at least 5m from any overhead line stanchion, lineside equipment foundations or any other structure.
- 8 The undertrack crossing may need to be installed under possession and/or temporary speed restriction of the railway, dependent upon method of working. A Possession is a closure of the operational railway. There is a minimum booking period of 18 weeks for Possessions and 33 weeks for temporary speed restrictions. Any costs incurred by Network Rail for train delays as a result of works to be borne by the Grantee. Possession may be shortened or cancelled by Network Rail at short notice, for operational reasons, and the Grantee must be prepared and make allowances for this in any contract. Network Rail will not be held responsible for any costs incurred as a result of such cancellations, but every effort will be made to provide a replacement possession at the earliest opportunity.
- 9 The Grantee is to provide predicted settlement calculations in order to demonstrate that there will not be any settlement, heave or lateral displacement to the track, either during or following, the works, which would adversely affect the operation of the railway. Should it be necessary for Network Rail to carry out remedial works to the track as a result of the works then the associated costs must be borne by the Grantee.
- 10 The Grantee is to provide details of cathodic protection (if proposed) to Network Rail for acceptance. In accordance with Network Rail's Zoné Standard LNE/RT1008, "Signalling Standard for the Testing of DC Track Circuits in the Vicinity of Cathodic Protection Installations", an initial test will be carried out in every case. In the event of any Irregularities, a secondary test will be carried out. Should it be necessary for Network Rail to carry out tests to determine the effect of cathodic protection upon the signalling system the cost of this must be borne by the Grantee. The Grantee is strongly urged to consider alternative methods of protection, as the costs of testing can be high.

- 11 The works must be carried out to detailed method statements including risk assessments, which are to be submitted to Network Rail or their agents for acceptance.
- 12 Works are to be supervised by Network Rail with costs borne by the Grantee.
- 13 The Grantee is to provide marker posts either side of railway showing the depth of the pipeline below ground level and ownership.
- 14 According to diameter, the pipeline is to be designed to withstand live loading from the railway and in accordance with Network Rail Line Procedure RT/CE/003 "Technical Approval Procedures for Civil Engineering Schemes". The Proposer is to submit a copy of the design calculations and independent design check certification to Network Rail for acceptance prior to physical works taking place.
- 15 A programme for the works should be submitted to Network Rail for approval. This should include works both adjacent to and underneath Network Rail owned property, with particular regard to the sleeve passing underneath the operational railway through the "zone of influence". This is required in order that a possession and a temporary speed restriction of the railway may be arranged and to demonstrate that the sleeve can pass through the "zone of influence" within the possession and temporary speed restriction period. Possessions of the railway at this location are likely to be on weekend nights. An allowance of up to one hour is to be given at the beginning and end of a possession to set up and remove protection measures.
- 16 The installation of any pumping, dewatering or other geotechnical processes shall be carried out only with Network Rail's prior approval.
- 17 Network Rail require that the undertrack crossing works shall progress continuously seven days per week and twenty four hours per day as the undertrack crossing passes underneath Network Rail owned property.
- 18 All works are to be carried out in accordance with "Requirements for Constructional Work On or Near Railway Operational Land".
- 19 If applicable, Network Rail require to be informed of the identity of the Planning Supervisor and requires a copy of both the form 10 and the Health and Safety Plan

produced in accordance with the CDM Regulations. The Safety Plan is to include the identification of the measures required in dealing with the hazards associated with working on or adjacent to the railway environment.

20 Network Rail requires any costs incurred in assisting the Grantee and his Contractor, to carry out works adjacent to the railway safely to be reimbursed by the Grantee, eg:

- (a) Project Management, including approval of Method Statements, and attendance at safety meeting etc.
- (b) Provision of attendance, supervision and protection.
- (c) Provision of possessions and isolations as required.
- (d) Provision of site access permits.

An estimate of Network Rail's costs associated with the works will be prepared as soon as the level of involvement has been established.

Confirmation in writing will be required before works commence that the Proposer is prepared to reimburse Network Rail's costs defined above.

It is considered that co-operation on the foregoing allow the Grantor or its contractor and Network Rail to fulfil the principles of the following legislation:

- (i) The Grantee has a duty under HASAW Part 1 Section 2, to ensure the Health & Safety and Welfare at Work of all his employees. The Grantee is to provide such information, instruction, supervision and working environment necessary to ensure the health and safety of his employees.

- (ii) The Grantee has a duty under HASAW Part 1 Section 3, to conduct works in such a manner so that persons not in his employment are not exposed to risks to their health and safety.

- (iii) Common law imposes a duty on everyone to avoid injuring each other. It requires one to take reasonable care to avoid acts that could be reasonably foreseen as likely to injure a neighbour.
- (iv) The CDM regulations require that in developing the Safety Plan, neighbours should be consulted and their requirements and or restrictions incorporated and complied with.
- (v) The New Roads and Street Works Act 1991 Clause 88 Part 4 & 5 state that for any works in the vicinity of a bridge, the bridge authority shall be consulted in relation to the works. In addition, reasonable facility shall be given for the authority to monitor the works and any reasonable requirements for the protection of the bridge set out by the authority should be complied with.
- (vi) A Signal Engineering team must be provided as part of the works in order for the reinstated track circuit to be tested following the installation. Len Williett, MDM to arrange appropriate cover through his Depot Signal engineer.
- (vii) The Telecom Engineer (as designated by Network Rail) has requested a full service search be carried out to ascertain the location of all telecom cables. All costs to be borne by HST.
- (viii) If any services need "lift and shift" all costs to be borne by HST.

Group Standards can be purchased from:

Willsons Printers
Highlander House
Cross Street
Newark
Nottinghamshire
NG24 1PP
Tel: 01636 702334 Fax: 01636 701396

Or via the Railway Safety and Standards Board Website

Network Rail Life Standards can be purchased from:

Customer Support
Technical Indexes Ltd
Willoughby Road
Bracknell
Berkshire
RG12 8DW
Tel: 01344 404409 Fax: 01344 404421 e-mail: cservices@techindex.co.uk

SEAL NO.
22-882

The common seal of NETWORK
RAIL INFRASTRUCTURE LIMITED
was affixed in the presence of:

LIWISSAY W. COOPER
Authorised Signatory

) Authorised Signatory as approved
) by a resolution of the board of
Network Rail Infrastructure
Limited on 24th September 2002

Duly authorised on behalf of Network Rail
Infrastructure Limited

Executed as a deed by HUMBER SEA
TERMINAL LIMITED acting by:

)
) Director
Secretary