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Agreement

Budenny LLP

and

Rotherham Borough Council

and

Barnsley Metropolitan Borough Council

made pursuant to section 106 of the Town and Country Planning Act 1990 relating to the Former ALBA PLC Warehouse Unit Cortonwood Drive Brampton Bierlow Rotherham

10 September 2014

THIS DEED is made on 10 September 2014

BETWEEN:

(1) **BUDENNY LLP** (Company No. OC348946) of 16 Great Queen Street, Covent Garden, London WC2B 5AH ("**Owner**");

(2) **ROTHERHAM BOROUGH COUNCIL** of Riverside House Main Street Rotherham, S60 1AE ("**Council**"); and

(3) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("**BMBC**")

RECITALS

(A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and is the authority that can enforce the terms of this Deed for the purposes of the 1990 Act.

(B) BMBC is the highway authority for the purpose of the 1980 Act for the area within which the Traffic Improvement Works are situated and accordingly it has been agreed that it is appropriate for the Council to nominate BMBC as the beneficiary of various of the covenants set out in clause 4 of this Deed.

(C) The Owner owns the long leasehold interest in the Site pursuant to the 200 year lease between (1) Cortonwood Ltd (2) Budenny LLP (3) Cortonwood (Management) Company Ltd and (4) Cortonwood Retail Park Ltd registered at HM Land Registry with title number SYK457589 (the "**Existing Interest**").

(D) This Deed shall apply in the event that the Planning Permission is granted pursuant to the Planning Application.

(E) The terms upon which this Deed is entered into have been agreed with the Council and BMBC and are considered to satisfy the requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

OPERATIVE PART

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Deed the following words and expressions shall have the following meanings unless the context otherwise requires:

"**1980 Act**" means the Highways Act 1980 (as amended);

"**1990 Act**" means the Town and Country Planning Act 1990 (as amended);

"**Development**" means the development of the Site by way of the demolition of existing warehouse and erection of A1 retail units with mezzanine floors (13,548 sqm gross external floor area) with associated car parking and landscaping (amendment to application reference RB2012/1615);

"**Index**" means the All Items Group (Item Reference CHAW) of the Retail Prices Index published by the HM Government Office for National Statistics provided that during any period no such index exists the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or in default of agreement fixed by the President for the time being of the Law Society on the application of any party) shall be used;

"**Index-Linked**" means increased in proportion to movements in the Index between the date of this Deed and the date the particular payment is made;

"**Implementation**" means (where used in relation to the Development or any part thereof) the demolition of any existing buildings on the Site (save where such demolition occurs as the result of any earthquake flood fire or physical natural disaster not resulting from any action or negligence of or on behalf of the Owner and which is outside the Owner's control) or the undertaking of a material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development by the Owner other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "**Implement**" and "**Implemented**" shall be construed accordingly;

"**Planning Application**" means the application for planning permission for the Development submitted to and validated by the Council on 8 May 2014 and allocated reference number RB2014/0612;

"**Planning Permission**" means the planning permission for the Development granted pursuant to the Planning Application;

"**Site**" means the Former ALBA PLC Warehouse Unit Cortonwood Drive Brampton Bierlow Rotherham which is the subject of the Planning Application and which is shown for identification purposes only edged in red on the Site Plan;

"**Site Plan**" means the plan attached to this Deed as Appendix 1;

"**Traffic Improvement Works**" means proposed improvement works to:

(a) Cortonwood Roundabout and/or

(b) Wath Roundabout and/or

(c) Broomhill Roundabout

the locations of which are shown for identification purposes only on the plan attached to this Deed as Appendix 2;

"**Traffic Improvement Works Contribution**" means a financial contribution of £154,845 (one hundred and fifty four thousand eight hundred and forty five pounds) Index-Linked towards the Traffic Improvement Works;

1.2 Where in this Deed reference is made to a clause paragraph schedule recital plan annex or appendix such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Deed or to a plan annex or appendix attached to this Deed.

1.3 References in this Deed to the Owner shall include reference to its successors in title and assigns and to persons claiming through or under it in relation to all or any part of the Site save where the context otherwise requires and references to the Council shall include reference to any successor bodies exercising any of the powers currently vested in the Council in relation to this Deed.

1.4 Words including the singular meaning where the context so admits include the plural meaning and vice versa.

1.5 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies and other corporate bodies and also firms and all such words shall be construed interchangeably in that manner.

1.6 Words denoting an obligation on a party to do an act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit suffer or allow infringement of the restriction.

1.7 Any reference to a statute or a provision thereof a statutory instrument or a provision thereof or such specification code of practice or general direction or policy or guidance as is issued under statutory authority shall include any modification extension or re-enactment thereof for the time being in force (including for the avoidance of doubt any modification extension or re-enactment made prior to the date of this Deed) and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom .

1.8 The word "including" means including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word **"include"** and its derivatives shall be construed accordingly.

1.9 The clause and paragraph headings in the body of this Deed do not form part of this Deed and shall not be taken into account in its construction or interpretation.

2. STATUTORY POWERS

2.1 This Deed is made pursuant to section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 and all other enabling powers and enactments which may be relevant for the purpose of giving validity to this Deed with the intent that the obligations herein shall bind the Owner and its successors in title and assigns and persons claiming under or through it an interest or estate in the Site as if that person had been an original covenanting party in respect of such interest for the time being held by it.

2.2 The obligations on the part of the Owner contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council pursuant to the said section 106.

3. CONDITIONAL DEED

This Deed is conditional upon the grant of the Planning Permission.

4. OWNER COVENANTS

The Owner covenants with the Council as follows:

4.1 To notify the Council and BMBC in writing of the proposed date of Implementation of the Development at least 28 days prior to the date that Implementation of the Development is proposed to occur.

4.2 Not to undertake the Implementation of the Development until the occupational lease dated 4 April 2011 made between Budenny LLP and UPS SCS (UK) LLP (the **"UPS Lease"**) has been terminated, surrendered or has otherwise expired and the tenant under the UPS Lease has vacated the Site.

4.3 Prior to Implementation of the Development to pay to BMBC the Traffic Improvement Works Contribution.

4.4 To comply with the obligations imposed on it by clauses 4.1, 4.2 and 4.3 of this Deed regardless of whether it, or the freehold owner of the Site, Implements the Planning Permission.

4.5 If prior to the satisfaction of the obligations set out at clauses 4.1, 4.2 and 4.3 it should acquire an interest in the Site that is superior to its Existing Interest as a result of which the Existing Interest is collapsed forfeited or merged with the superior interest it shall enter into a further agreement pursuant to section 106 of the 1990 Act so as to bind the superior interest with the same covenants as are set out at clauses 4.1, 4.2 and 4.3 of this Deed.

5. BMBC COVENANTS

5.1 BMBC hereby covenants to use the monies paid by the Owner pursuant to this Deed only for the purposes stated in the Deed for which they were paid and where such payments or any part thereof remain uncommitted for the purposes for which they were paid after the period of five years beginning with the date of payment to repay any monies as then remain uncommitted to the party that made the payment.

6. MISCELLANEOUS PROVISIONS

6.1 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise by it of its statutory functions.

6.2 Without prejudice to the terms of this Deed and the obligations imposed on the Owner herein nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State on appeal or reference to him after the date of this Deed.

6.3 This Deed shall lapse and be of no further effect if the Planning Permission lapses without first having been Implemented.

6.4 If the Planning Permission is quashed or modified without the Owner's consent or revoked this Deed shall cease to have effect.

6.5 Nothing in this Deed shall require the performance by the Owner of any obligation whatsoever in upon over or under land outside the ownership and control of the Owner.

6.6 Save as provided at clause 4 no person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed:

(a) to the extent that such breach relates to any part of the Site in which that person has no interest; and/or

(b) which occurs after he has parted with his interest in the Site or if it be part only that part in respect of which such breach occurs save for any prior breach for which he shall continue to be liable.

7. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the Council.

8. DISPUTE RESOLUTION

8.1 The obligations contained within this Deed are given on the basis that in the event of any dispute or difference arising between the Owner and the Council or BMBC in respect of any matter contained in this Deed such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding

on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine.

9. **GOVERNING LAW AND JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales.

EXECUTED AS A DEED AND DELIVERED on the date first above written

Executed as a deed by **BUDENNY LLP** acting by a member in the presence of:

Signature .....
(Member)

Signature of witness .....

Name (in block capitals) ANN HART

Address 42 BRANTWOOD GDNS. ILFORD IG4 5LG

Occupation Personal Assistant

Executed as a Deed the Common Seal of **ROTHERHAM BOROUGH COUNCIL** was hereunto affixed in the presence of:

411

Authorised Signatory

The common seal of **BARNSLEY METROPOLITAN BOROUGH COUNCIL** was hereunto affixed in the presence of:

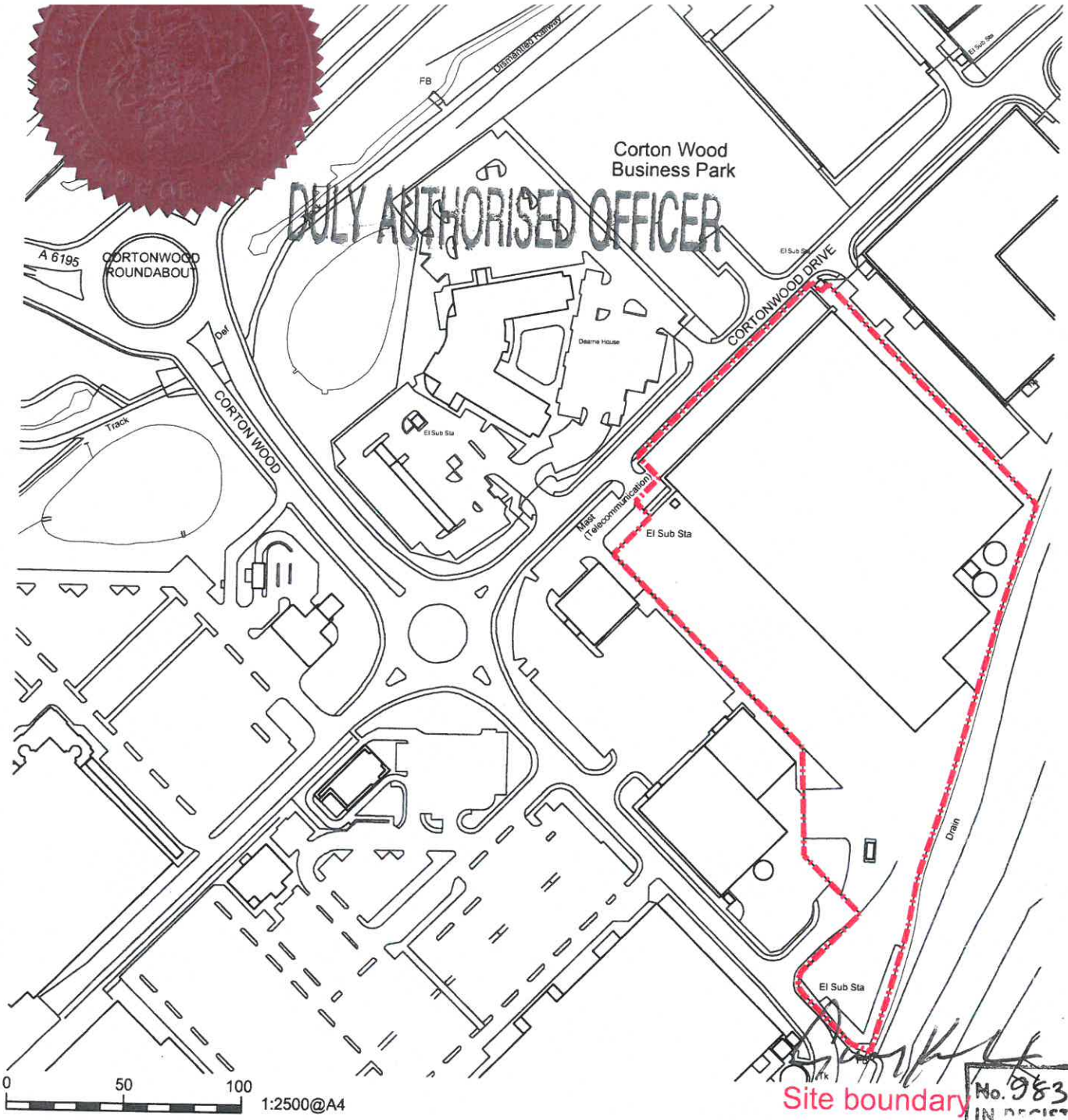
Name:
Position:

AUTHORISED SIGNATORY

No. 983 IN REGISTER

APPENDIX 1

Site Plan



Site boundary shown in red.

No. 983
IN REGISTER

AUTH
SIGI

Rev.	Date	Description	Drawn	Checked
A	17.04.14	Planning Issue	LC	-

DAVIS WEATHERILL
PARTNERSHIP
CHARTERED ARCHITECTS

Harborne Court
67-69 Harborne Rd
Edgbaston
Birmingham
B15 3BU
T: 0121 455 9234
F: 0121 456 2232
E: reception@davisweatherill.co.uk

84 Wellington Street
Leeds
LS1 2EE
T: 0113 243 8436
F: 0113 243 3222
E: info@davisweatherill.co.uk

Contact Birmingham Office ☐
Contact Leeds Office ☑

www.davisweatherill.co.uk

Client: HELICAL RETAIL

Project: Redevelopment of Alba/UPS Warehouse, Cortonwood Drive.

Title: Location Plan

Drawn LC Checked

Date April 14 Scale 1:2500@A4

Status Planning

Drg. No. 14592 - PA 01

Rev. A

Notes:

Approval/Particulars on the information shown should be obtained prior to being used as a basis for any contract.

This drawing as been prepared subject to the following:

1. Planning Approval.
2. Building Regulation Approval.
3. Fire Officers Approval.
4. Highways Approval.
5. Enquiries on location of Statutory Utilities services & equipment.

Drawing based on Ordnance Survey data and is subject to a full line & level survey.
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Contractors to check dimensions and notify any discrepancies or errors to the company immediately.

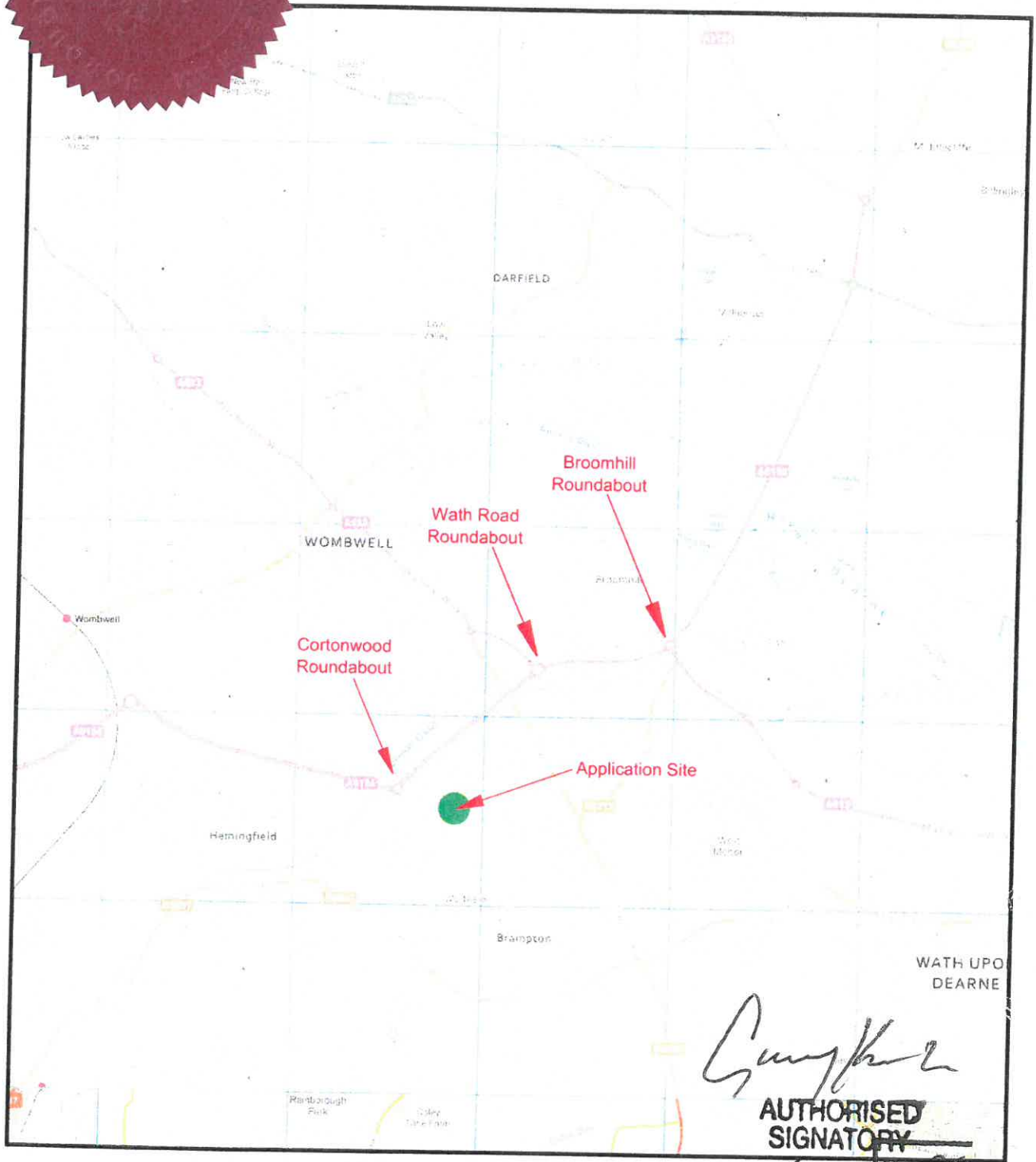
Work to figured dimensions only. Do not scale.

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APPENDIX 2

Traffic Improvement Works

DULY AUTHORISED OFFICER



AUTHORISED SIGNATORY

No. 98 IN REGIS

Location of the Traffic Improvement Works

Northern Transport Planning Ltd
Suite 7, Vincent House
136 Westgate, Wakefield
West Yorkshire, WF2 9SR
Tel: 01924 367460

NTP