

DATE 21st October 2019

Given by

(1) M & D DEVELOPMENTS LIMITED

to

(2) SUFFOLK COUNTY COUNCIL

**Planning Obligation by Deed under Section 106
of the Town and Country Planning Act 1990**

relating to

**Land at Blomfield House Health Centre Looms Lane
Bury St Edmunds Suffolk**



THIS DEED IS DATED 21st October 2019

AND GIVEN BY:

- (1) **M & D DEVELOPMENTS LIMITED** whose company number is 01538311 whose registered office is at Hengrave Hall Hengrave Bury St. Edmunds Suffolk IP28 6LZ (hereinafter called the "**Owner**")

IN FAVOUR OF:

- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")

INTRODUCTION

- A The County Council is the local education authority and the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- B The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number SK318525
- C The Owner intends to develop the Property pursuant to the Planning Permission.
- D The Council has failed to reach a decision in respect of the Application and the Owner has submitted the Appeal on 8 January 2019 for determination by the Secretary of State.
- E The Owner is willing to give this undertaking to perform the obligations set out in this deed in the event of the Appeal being allowed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- "Act" the Town and Country Planning Act 1990 (as amended)
- "Appeal" Means the appeal to the Secretary of State following the failure by the Council to reach a decision in respect of the Application given appeal reference APP/E3525/W/19/3219994

"Application"	the full application for planning permission to develop the Site in accordance with the application validated by the Council on the 29 th March 2018 and bearing the Council's reference number DC/18/0610/FUL
"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto
"BCIS Indexed"	the increase in any sum referred to in the Third Schedule by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 10 of this Deed
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions diversion and lay of services erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commenced" and "Commence Development" shall be construed accordingly
"Completion of Development"	the date that the last Dwelling is first Occupied
"Council"	WEST SUFFOLK COUNCIL of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU
"Development"	the development of the Site as approved under the full Application described as being the conversion of existing health centre and offices to 16 apartments and a two storey rear extension and the creation of a third floor
"Dwelling"	a dwelling to be constructed pursuant to the Planning Permission and "Dwelling" and "Dwellings" shall be construed accordingly

“Late Payment Interest”	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
“Library Contribution”	Two hundred and fifty-six pounds (£256) BICS Indexed
“Occupation”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupied and “Occupy” shall be construed accordingly
“Planning Permission”	the full planning permission subject to conditions as may be granted by the Council pursuant to the Application
“Primary School Contribution”	Thirty-three thousand one hundred and ninety-two pounds (£33,192.00) BCIS Indexed
“Secretary of State”	the Secretary of State for Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Town and Country Planning Act 1990
“Site”	the land described in the First Schedule against which this Deed may be enforced and as shown edged red for identification purposes only on the Site Plan
“Site Plan”	the plan marked “Site Plan” attached to this Deed
“Working Days”	Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause sub-clause schedule paragraph sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause schedule paragraph sub-paragraph or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.4 Wherever more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the County Council its successor to its statutory functions
- 2.7 The obligations in this Agreement shall not be enforceable against
- 2.7.1 any individual person who is the owner and/or an occupier for residential purposes of a Dwelling or any mortgagee of such a Dwelling
- 2.7.2 any statutory undertaker or other person who acquires any part of the Property or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services
- 2.8 The headings are for reference only and shall not affect construction
- 2.9 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person under the implied or actual control of the Owner

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers
- 3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council as the local planning authority against the Owner and their successors in title
- 3.3 This Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act

4. CONDITIONALITY

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission and

4.1.2 the Commencement of Development

SAVE FOR the provisions of this clause and clauses 6, 10, 11, 12 and 13 which shall come into effect immediately upon completion of this Deed

4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission accepted by the Owner this Deed will cease to have any further effect and

4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full

4.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used) the following provisions will apply:

4.3.1 proceedings by way of judicial review are concluded:

4.3.1.1 when permission to apply for judicial review has been refused and no further application can be made

4.3.1.2 when the court has given judgement in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused or

4.3.1.3 when any appeal(s) is or are finally determined

4.3.2 proceedings under Section 288 of the Act are concluded:

4.3.2.1 when the court has given judgement in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused or

4.3.2.2 when any appeal(s) is or are finally determined

5. THE OWNERS COVENANTS

5.1 The Owner covenants with the County Council as set out in the Second Schedule

6. MISCELLANEOUS

6.1 The Owner shall act in good faith and shall co-operate with the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the County Council and its duly authorised officers or agents to have access to any part or all of the Site or any requests to provide documentation within the Owners possession (at the Owners expense) for the purposes of monitoring compliance with the obligations contained herein

6.2 The Owner agrees declares and covenants with the County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this agreement and further shall indemnify the County Council for any expenses or liability arising to the County Council in respect of breach by the Owner or any obligation contained herein save to the extent that any act or omission of the County Council its employees or agents has caused or contributed to such expenses or liability

6.3 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.4 This Deed shall be capable of being registered as a local land charge by the County Council

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

6.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owner)

6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it

- 6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 6.9 If the inspector appointed to determine the Appeal or the Secretary of State clearly specifies in any decision letter granting the Planning Permission that one or more of the obligations in this deed are unnecessary then the said planning obligation or obligations shall to the extent specified by the Inspector or the Secretary of State not take effect and shall not be enforceable by the County Council.
- 6.10 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 6.11 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the County Council
- 6.12 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority
- 6.13 The Owner covenants and warrants to the the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

7. INDEXATION

Any sum referred to in the Second Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

- 7.1 A is the sum payable under this Deed
- 7.2 B is the original sum calculated as the sum payable
- 7.3 C is the BCIS Index for the month two (2) months before the date on which the sum is payable
- 7.4 D is the BCIS Index for the month two (2) months before the date of this Deed and
- 7.5 C/D is greater than 1

8. INTEREST

If any payment due under this Deed is not paid on time Late Payment Interest will be payable from the date payment is due to the date of payment

9. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

10. CHANGE IN OWNERSHIP

The Owner covenants to give the County Council written notice of any transfer in ownership of any of any freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like

11. COMMUNITY INFRASTRUCTURE LEVY

The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 the obligations imposed in this Agreement are (a) necessary to make the Development permitted pursuant to the Application acceptable in planning terms (b) directly relate to the Development permitted pursuant to the Application and (c) fairly and reasonably relate in scale and kind to the Development permitted pursuant to the Application

12. JURISDICTION

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

13. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

In witness whereof the Parties hereto have executed this deed on the day and year first before written

SIGNED AS A DEED BY

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M & D DEVELOPMENTS LIMITED

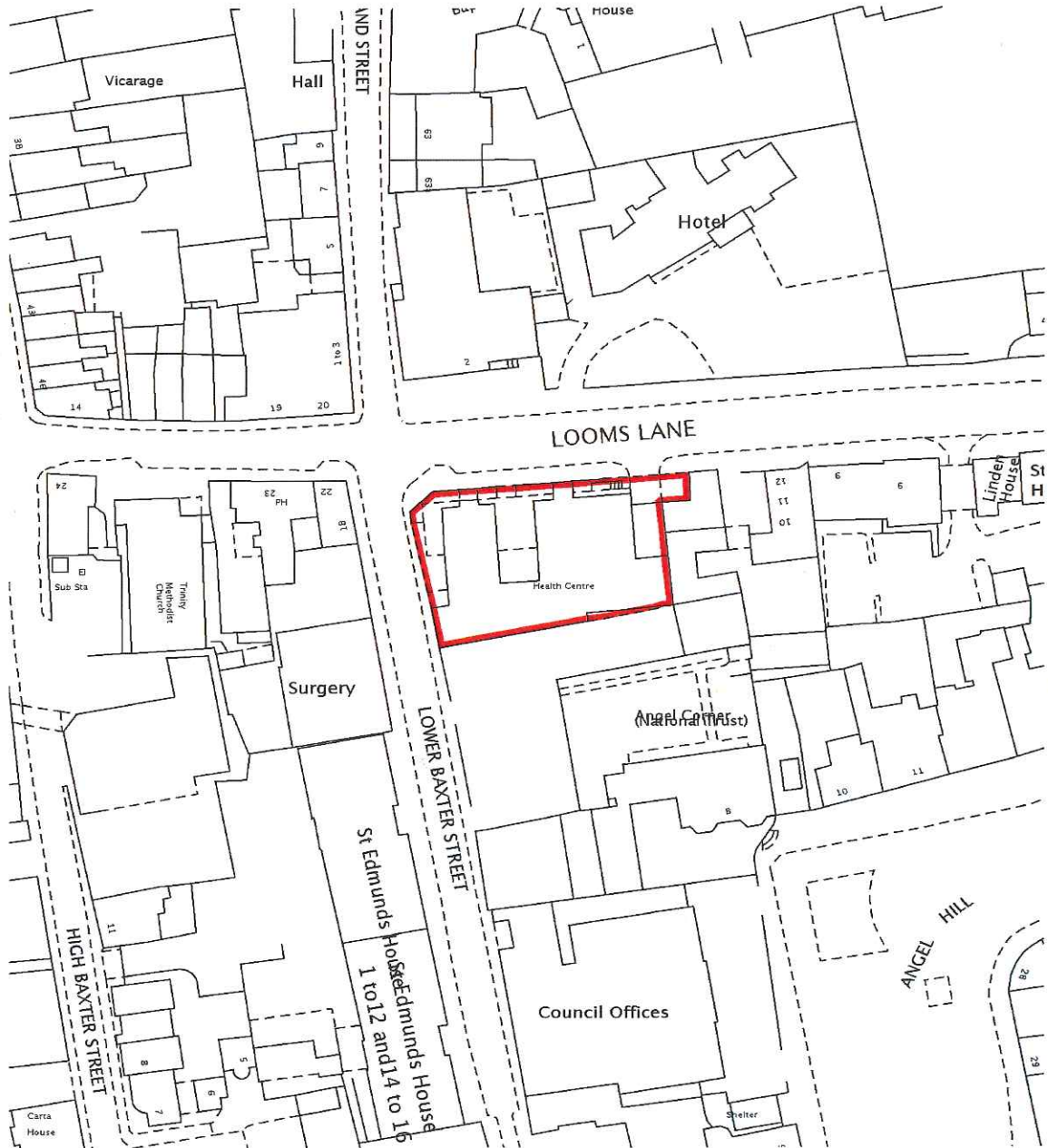
acting by a director in the presence of:

TEES LAW
TITAN HOUSE
CASTLE PARK
CASTLE STREET
CAMBRIDGE
CB3 0AY

FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Site which is registered at HM Land Registry under title number SK318525

SITE PLAN



SECOND SCHEDULE

THE OWNER COVENANTS WITH THE COUNTY COUNCIL:

1 PAYMENTS

- 1.1 To pay to the County Council the Library Contribution prior to the first (1st) Occupation of the Dwellings
- 1.2 Not to Occupy or permit Occupation of the Dwellings until the Library Contribution has been paid to the County Council
- 1.3 To pay to the County Council the Primary School Contribution prior to the first (1st) Occupation of the Dwellings
- 1.4 Not to Occupy or permit Occupation of the Dwellings until the Primary School Contribution has been paid to the County Council

2 PROGRESS OF DEVELOPMENT

- 2.1 To inform the County Council by way of written notice within seven (7) days following:
 - 2.1.1 Commencement of Development
 - 2.1.2 Occupation of the first (1st) Dwelling
 - 2.1.3 Completion of Development