

DATE 23 December 2019

(1) ESSEX NURSING HOMES LIMITED

to

(2) WEST SUFFOLK COUNCIL

and

(3) SUFFOLK COUNTY COUNCIL

**UNILATERAL PLANNING OBLIGATION
UNDER THE
TOWN AND COUNTRY PLANNING ACT 1990**

relating to

Land at the Weymed site Swan Lane Bury St. Edmunds Suffolk

West Suffolk Council
West Suffolk House
Western Way
Bury St. Edmunds
Suffolk

This Deed is made the 23 day of December 2019

FROM:

- (1) **ESSEX NURSING HOMES LIMITED** (company registration number 01386774) whose registered office is at Butts Green Mayes Lane Sandon Chelmsford England CM2 7RW (hereinafter called the "**Owner**")

TO:

- (2) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (3) **SUFFOLK COUNTY COUNCIL** of County Council of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")

INTRODUCTION:

- A The Owner is the freehold owner of the Site as set out in the First Schedule
- B The Council is the local planning authority
- C The Owner has submitted to the Council the Application to vary certain conditions of the Original Permission
- D The Owner is willing to give this undertaking to perform the obligations set out in this Deed in order to facilitate the grant of planning permission by ensuring the Development also replaces the s106 contributions secured in the Original Permission

NOW WITHIN THIS DEED AS FOLLOWS:

OPERATIVE PART

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)
"Affordable Housing Contribution"	four hundred and thirty-eight thousand seven hundred and eighty-one pounds (£438,781.00)

BCIS Indexed

"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 Second Schedule and 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
"Child Care Contribution"	twelve thousand five hundred and twenty-nine pounds and forty-nine pence (£12,529.49) BCIS Indexed
"County Council"	Suffolk County Council of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX
"Development"	the development of the Site as approved by the Planning Permission
"Dwellings"	a dwelling (including a house flat or bungalow) to be constructed pursuant to the Planning Permission and "Dwelling" and "Dwellings" shall be construed accordingly
"Education Contribution"	one hundred and seventy-four thousand three hundred and sixty-four pounds thirty-eight pence (£174,364.38) BCIS Indexed
"Interest"	interest at four (4) per cent above the base lending rate of the Bank

	of England from time to time
"Library Contribution"	three thousand seven hundred and ninety-one pounds (£3,791.00) BCIS 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
"Original Permission"	the original planning permission granted on 19 th March 2013 whose reference is SE/12/0451/FULCA
"Plan"	the plan of the Site attached to this Deed
"Planning Permission"	the planning permission subject to conditions to be granted by the Council pursuant to the Application
"Site"	the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Plan

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule 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 interchangeably in that manner

- 2.4 Wherever there is 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 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory functions
- 2.6 The headings and contents list are for reference only and shall not affect construction
- 2.7 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use all reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972
- 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 Council as the local planning authority against the Owner and their successors in title
- 3.3 For the avoidance of doubt if the Planning Permission is Commenced and the Development is carried out in accordance with the Planning Permission then the S106 dated 18th March 2013 related to the Original Permission shall be void and of no effect

4 CONDITIONALITY

The obligations set out in the Second Schedule and Third Schedule are conditional upon the grant of the Planning Permission and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed

5 THE OWNERS' COVENANTS

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

6 MISCELLANEOUS

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.2 This Deed will be registered as a local land charge by the Council
- 6.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 6.4 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 (without the consent of the Owner) it is modified by any statutory procedure
- 6.5 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
- 6.6 This Deed shall not be enforceable against the future individual private purchasers or tenants who may Occupy the Dwellings constructed pursuant to the Planning Permission
- 6.7 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 after the date of this Deed
- 6.8 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority
- 6.9 The Owner covenants from the date that this Deed takes effect to allow the Council and its respectively duly authorised officers or agents at all reasonable times and upon written reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed

- 6.10 The Owner hereby covenants that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived

7 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

8 VAT

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

9 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England

10 INDEXATION

All sums referred to in the Second Schedule and the Third Schedule shall be increased by an amount equivalent to the increase in the BCIS Index 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:

10.1 A is the sum payable under this Deed

10.2 B is the original sum calculated as the sum payable

10.3 C is the BCIS Index most recently published for the month before the date on which the sum is payable

10.4 D is the BCIS Index published for the month of the date of this Deed and

10.5 C/D is greater than 1

11 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

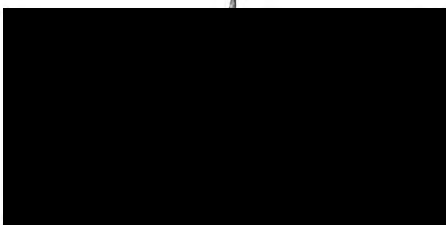
12 FEES

The Owner shall pay on the date hereof the reasonable legal costs of the Council incurred in preparing and completing this Deed

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 party hereto have executed this Deed on the day and year first before written



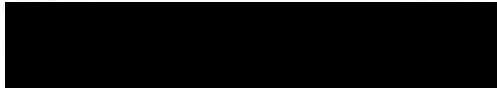
SIGNED AS A DEED BY:

ESSEX NURSING HOMES LIMITED: DIRECTOR.

Signature of witness



Name of witness



Address



FIRST SCHEDULE

Details of the Owners Title and description of the Site

The Site is the land forming part of the land edged red on the Site Plan below at the Weymed site Swan Lane Bury St. Edmunds Suffolk the title to which forms part of land registered at the Land Registry under title number SK329781

Site Plan



SECOND SCHEDULE

THE OWNER COVENANTS WITH THE COUNCIL:

1. FINANCIAL CONTRIBUTIONS

- 1.1 To pay to the Council the Affordable Housing Contribution prior to the first Occupation of the Dwellings
- 1.2 Not to Occupy or permit Occupation of any of the Dwellings until the Affordable Housing Contribution has been paid in full to the Council

SECOND SCHEDULE

THE OWNER COVENANTS WITH THE COUNTY COUNCIL:

2. FINANCIAL CONTRIBUTIONS

- 2.1 To pay to the County Council the Child Care Contribution and the Education Contribution and the Library Contribution prior to the first Occupation of the Dwellings
- 2.2 Not to Occupy or permit Occupation of any of the Dwellings until the Child Care Contribution and the Education Contribution and the Library Contribution have been paid in full to the County Council