

DATE 13th May 2020

(1) WILLIE SNAITH LIMITED

to

(3) WEST SUFFOLK COUNCIL

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

relating to

Land West of Fordham Road Newmarket Suffolk

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

This Deed is made the 13th day of May 2020

FROM:

- (1) **WILLIE SNAITH LIMITED** (Co. Regn. No. 11205263) of Whitegate Farm Bungalow Witcham Road Mepal Ely CB6 2AF (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")

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 the Application to the Council
- 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 meets the Councils policy requirements

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)
"Application"	the application for full planning permission validated by the Council on the 23rd November 2018 for the Development and allocated reference number DC/18/2210/FUL
"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 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 laying of services erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly

"County Council"

Suffolk County Council the local highways authority whose address is Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX

"Development"

the development of the Site for (i) two drive-through cafe/restaurant units (Use Class A1/A3 for Costa and Use Class A3/A5 for McDonalds) with associated parking and landscaping and (ii) a McDonalds Climbing box as approved by the Planning Permission

"Index"

All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

“Interest”	interest at 4 per cent above the minimum lending rate of the Bank of England from time to time
“Occupation” and “Occupied”	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
“Plan”	the plan of the Site attached to this Deed
“Planning Permission”	the full 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
“TRO Contribution”	fifteen thousand pounds (£15,000.00)

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 reference to an Act of Parliament or Directive of the European Union shall include any modification extension or re-enactment of that Act or Directive 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 Directive or deriving validity from it
- 2.6 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 the successors to their respective statutory functions
- 2.7 The headings and contents list are for reference only and shall not affect construction
- 2.8 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use 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 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 Council as the local planning authority against the Owner and their successors in title

4 CONDITIONALITY

- 4.1 The obligations set out in the Second Schedule are conditional upon:
- 4.1.1 the grant of the Planning Permission;
 - 4.1.2 the Commencement of Development;

and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed

5 THE OWNER`S COVENANTS

The Owner hereby covenants with the Council as set out in the Second 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 is registerable 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 or expires prior to the Commencement of Development
- 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 be enforceable (in respect of any restriction on Occupation and use only) against owner-occupiers or tenants of the Dwellings constructed pursuant to the Planning Permission and against those deriving title from them
- 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 agrees 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 CHANGE IN OWNERSHIP

The Owner shall give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/18/2210/FUL 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 purchased and/or leased by reference to a plan and the title number or numbers thereof

9 INDEXATION

The sum referred to in the Second Schedule shall be increased by an amount equivalent to the increase in the 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:

A is the sum payable under this Deed

B is the original sum calculated as the sum payable

C is the Index for the month two (2) months before the date on which

the sum is payable

D is the Index for the month two (2) months before the date of this Deed and

C/D is greater than 1

10 INTEREST

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment

11 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable and the Council will not charge VAT on the said consideration

12 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

13 FEES

The Owner shall pay on the date hereof the reasonable legal costs of the Council incurred in preparing and completing this Deed and pay the Councils s106 Reporting and Monitoring Fee of £500.00

14 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 this document has been executed as a Deed on the day and year first before written

EXECUTED AS A DEED by)

WILLIE SNAITH LIMITED)

acting by its authorised signatories)

Signature of Director:

Name (BLOCK CAPITALS):

Signature of Director/ Secretary:

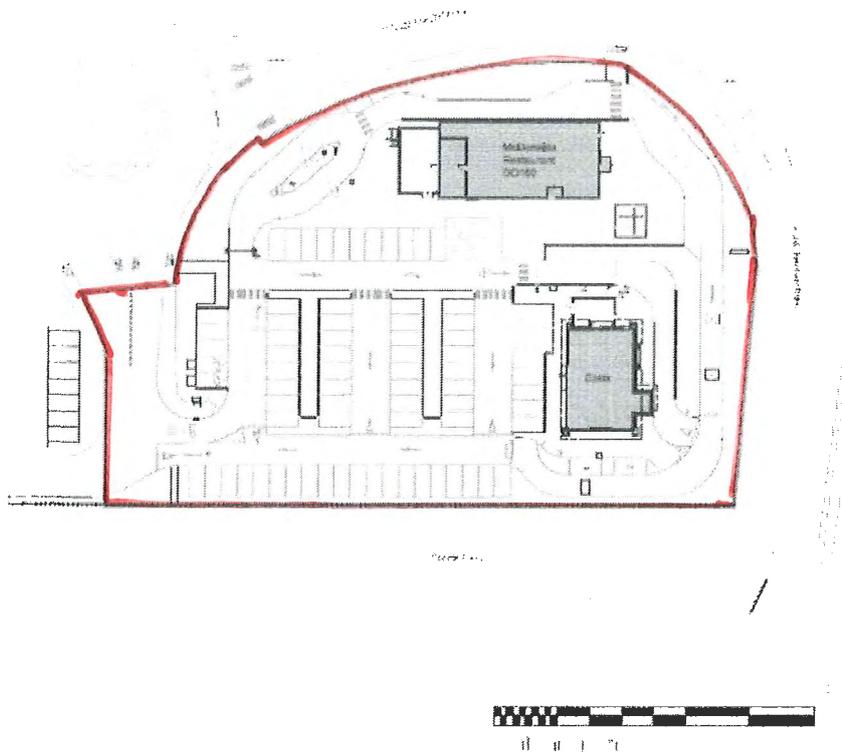
Name (BLOCK CAPITALS):

FIRST SCHEDULE

Details of the Owners Title and description of the Site

ALL THAT freehold land belonging to the Owner on the west side of Fordham Road Newmarket registered at HM Land Registry and forming the whole of title number SK373250 and part of title number SK95105 as is shown edged red on the Plan

The Plan



SECOND SCHEDULE

The Owner Covenants with the Council

1 THE TRO CONTRIBUTION

- 1.1 The Owner covenants to pay the TRO Contribution to the County Council (together with any increase under clause 9 of this Deed due to the Index) prior to the first Occupation of the Development
- 1.2 The Owner hereby covenants not to Occupy or permit or allow the Occupation of the Development until the sum defined under clause 1.1 of this Second Schedule has been paid to the County Council