

Dated:

23 September 2020

2020

- (1) SUFFOLK COUNTY COUNCIL
- (2) STOWMARKET CARE CENTRE LIMITED
- (3) STOWMARKET CARE CENTRE 2 LIMITED
- (4) PEAR BLOSSOM GLOBAL LIMITED

**Planning Obligation by Deed under Section 106 of the
Town and Country Planning Act 1990 relating to land to
the East and West of Prentice Road, Stowmarket,
Suffolk (relation to Full Planning Application
DC/19/01482)**

DATE 23 September

2020

PARTIES

- (1) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council")
- (2) **STOWMARKET CARE CENTRE LIMITED (formerly called SAXITECH LIMITED) (CRN 08891118)** of 505 Pinner Road, Harrow, HA20 6EH ("the First Owner")
- (3) **STOWMARKET CARE CENTRE 2 LIMITED (CRN 12185750)** of 505 Pinner Road, Harrow, HA20 6EH ("the Second Owner")
- (3) **PEAR BLOSSOM GLOBAL LIMITED (incorporated in British Virgin Islands)** of Independent House, 15 Mile End Road, Colchester, CO4 5BT ("the Chargee")

INTRODUCTION

- 1 The District Council is a local planning authority for the purposes of the Act for the area in which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- 2 The County Council is the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area in which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- 3 The First Owner is the owner of the freehold interest in part of the Land shown edged green for the purposes of identification on the Plan free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers SK263608 and SK273512.
- 4 The Second Owner is the owner of the freehold interest in part of the Land shown edged blue for the purposes of identification on the Plan free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers SK263608 and SK273512.
- 5 The First Owner has submitted the Application to the District Council for the Development on the Land and the District Council has

resolved to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.

- 6 The Owners have agreed to enter into this Deed to bind the Land in the event that the District Council grants planning permission for the development sought in the Application ("Planning Permission").
- 7 The Chargee has agreed to be a party hereto in the manner hereinafter provided the land shall be bound by the obligations and that the security of the charges over the Land shall take effect subject to the obligations provided that the Chargee shall otherwise have no liability hereunder unless it takes possession of the Land or part thereof in which case (and only in which case) it will be bound by the obligations as if it were a person deriving title from the Owners.
- 8 The County Council considers and the Owners acknowledge that the Development should not take place until certain restrictions regulating the use of the Land are imposed in the manner hereafter appearing and pursuant to section 106 of the Act the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 9 The County Council (and the District Council) in resolving to approve the Application are satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended)

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)

"Application"

the planning application for full Planning Permission to develop the Land in accordance with the application plans and other materials deposited with the District Council dated 04 April 2019 and bearing the District Council's reference number DC/19/01482

"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 District Council the County Council and the Owners

"BCIS Index Linked"

the increase in any sum referred to in the Third Schedule by an amount equivalent to the increase in the BCIS Index from the date hereof until the date on which such sum is payable 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 by or on behalf of the Owners on the Land other than (for the purposes of this Deed and for no other

purpose) operations consisting of site clearance, demolition work, enabling works, earthworks, archaeological investigations and digs, exploratory boreholes, 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 hoardings and fencing or any temporary means of enclosure, the temporary display of site notices or advertisements, the formation of temporary construction accesses, operations permitted by the Town and Country Planning (General Permitted Development) Order 2015 and "Commence Development" shall be construed accordingly;

"Development"

the development of the Land for the construction of a care home and 93no residential apartments with associated car parking and amenity spaces as set out in the Application

"District Council"

Mid-Suffolk District Council of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX

"Highways Improvement Contribution"

the sum of £10,000.00 (ten thousand pounds) BCIS Index Linked to be paid to the County Council to be used towards the administration and implementation of Traffic Regulation Orders along Prentice Road and the local vicinity, as identified as being necessary by the

Highway Authority

"the Land"	the land that is the subject of the Planning Permission against which this Deed may be enforced and as shown for identification purposes only edged green and blue on the Plan
"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"Notice of Actual Commencement"	Notice in writing to advise of the actual Commencement Date
"Notice of Expected Commencement"	Notice in writing to advise of the expected Commencement Date
"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
"Owners"	the First Owner and the Second Owner jointly and severally
"Planning Permission"	the planning permission subject to conditions as may be granted by the District Council pursuant to the Application such planning permission to be substantially in the form of the draft as set out in the First Schedule

"Plan"	Means the 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 to the Land or any part thereof as if that person had been an original party to this

Deed and in the case of the District Council and the County Council and their successors to their respective statutory functions

- 2.7 None of the covenants contained in this Deed on the part of the Owners shall be enforceable against: -
- a) those persons who purchase (including purchasers by way of long lease) any Dwelling for occupation by themselves or their lessees tenants or individuals of the Dwellings; or
 - b) any statutory undertaker who acquires any part of the Land or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 2.10 The headings are for reference only and shall not affect construction.
- 2.11 Any covenant by the Owners 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.

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 Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council against the Owners or their successors in title
- 3.3 This Deed is a Deed and may be modified or discharged in part or in total at any time after the date of this Deed by Deed between the parties in the form of a Deed
- 3.4 Unless the District Council or the County Council requires otherwise pursuant to an application under Section 73 of the Act to any variation or

release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission.

4 CONDITIONALITY

4.1 This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.3, 7.4, 9, 12, 15, 19 and 20 (legal costs change in ownership right of entry dispute resolution jurisdiction and delivery) 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 Owners 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 Owners 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:

- (a) when permission to apply for judicial review has been refused and no further application can be made;
- (b) when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or
- (c) when any appeal(s) is or are finally determined.

4.3.2 proceedings under Section 288 of the Act are concluded:

- (a) 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
- (b) when any appeal(s) is or are finally determined.

5. THE OWNER'S COVENANTS

5.1 The Owners hereby jointly and severally covenant with the County Council as set out in the Second Schedule

6 THE COUNTY COUNCIL'S COVENANTS

6.1 The County Council hereby covenants with each of the Owners as set out in the Third Schedule

7 MISCELLANEOUS

7.1 The Owners 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 Owners shall comply with any reasonable requests of the County Council its duly authorised officers or agents to

have access to any part or all of the Land 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

- 7.2 The Owners each agree declare and covenant with the County Council that it 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 Owners 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
- 7.3 The Owners undertake to pay to the District Council on completion of this Deed the proper and reasonable legal costs of the District Council incurred in the negotiation preparation and execution and completion of this Deed in the sum of £1,200 (one thousand, two hundred pounds).
- 7.4 The Owners undertake to pay to the County Council on completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed up to a maximum of £1,500 (one thousand, five hundred pounds) and to pay to the County Council the sum of four hundred and twelve pounds (£412) towards reporting and monitoring the s106 obligations
- 7.5 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.6 This Deed shall be registerable as a local land charge by the District Council.

- 7.7 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owners from the County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure.
- 7.8 Following the performance and satisfaction of all the obligations contained in this Deed the County Council shall at the request of either of the Owners arrange for the District Council to effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.9 Insofar as any clause or other provision of this Deed is 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
- 7.10 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 Owners)
- 7.11 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 Land (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 Land notwithstanding the retention of

easements or the benefit of covenants, restrictions or reservations in respect of it.

- 7.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 7.13 The Owners agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of the Deed are hereby waived
- 7.14 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.15 The Owners each covenant and warrant to the District Council and the County Council that they have full power to enter into this Deed and there is no other person other than the Chargee having a charge over or any other interest in the Land whose consent is necessary to make this Deed binding on the Land and all estates and interests therein.

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the County Council or either of the Owner 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 County Council or either of the Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

9 CHANGE IN OWNERSHIP

- 9.1 The Owners agrees with the County Council to give it written notice of any transfer in ownership of any of their freehold interests in the Land 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 Land 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

10 INDEXATION

- 10.1 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:

- 10.1.1 A is the sum payable under this Deed;

10.1.2 B is £10,000;

10.1.3 C is the Index for the month two (2) months before the date on which the Highways Improvement Contribution is payable;

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

10.1.5 C/D is greater than 1.

11 INTEREST

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

12 RIGHT OF ENTRY

12.1 At all times on not less than twenty four (24) hours written notice except in case of emergency with or without notice the Owners shall allow any employee or agent of the County Council entry to the Land for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

12.1.1 such employee or agent on arrival at the Land shall if requested by any person present who appears to be the Owners the manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Land)

12.1.2 such entry shall be effected between 08.00 and 18.00 on any day

12.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary

12.1.4 such employee or agent may take photographs measurements and levels

12.1.5 such employee or agent may not remain on the Land for no longer than is reasonably necessary for carrying out a proper inspection

12.1.6 such employee or agent and any other accompanying persons shall comply with the Owners' or the Owners' representative's reasonable directions and precautions in the interests of safety

13 VAT

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

14 NOTICES

14.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 14.2

14.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows: -

The County Council	The Executive Director of Growth, Highways and Infrastructure (or a duly appointed successor), Suffolk County Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
Stowmarket Care Centre Limited	505 Pinner Road, Harrow, HA20 6EH
Stowmarket Care Centre 2 Limited	505 Pinner Road, Harrow, HA20 6EH
Pear Blossom Global Limited	Independent House, 15 Mile End Road, Colchester, CO4 5BT

14.3 Any notice or other written communication to be given by the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the County Council or by a duly authorised officer of the County Council as appropriate

14.4 Any notice or other communication given or served upon either the First Owner or the Second Owner must also be given or served upon the Owners' Solicitors, Goodman Derrick LLP of 10 St Bride Street London EC4A 4AD quoting reference SJC/36940.2

15 DISPUTE RESOLUTION

15.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or

termination) shall be referred to arbitration before a single Expert (the "Expert")

15.2 The Parties shall jointly appoint the Expert not later than twenty-eight (28) days after service of a request in writing by either Party to do so

15.3 If the Parties are unable to agree within twenty-eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Parties as follows:

15.3.1 difference or question relates to the rights and liabilities of any Party or to the terms or conditions to be embodied in the Agreement or document appertaining to the Agreement it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or

15.3.2 difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or

15.3.3 difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Parties but in default of agreement appointed at the request of either Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or

15.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute

15.4 In the event of a reference to arbitration the Parties agree to:

15.4.1 prosecute any such reference expeditiously; and

15.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable

15.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award

15.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing

15.7 The award shall be final and binding both on the Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be

15.8 Unless this Deed has already been terminated each of the Parties shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause 15 but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed)

16 SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT

16.1 Where in the opinion of either of the Owners any of the provisions of this Deed have been satisfied either of the Owners shall be entitled

to apply to the County Council for a certificate to that effect and upon the County Council being satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the County Council shall issue a certificate to such effect

17 COMMUNITY INFRASTRUCTURE LEVY

17.1 The Parties to this Agreement 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

18 Notices

18.1 The Owners covenant to inform the District Council and the County Council by way of written notice within seven (7) days following:

- a) The Expected Date of Commencement
- b) The Date of Commencement of Development;
- c) completion of the Development

19 JURISDICTION

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

20. 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

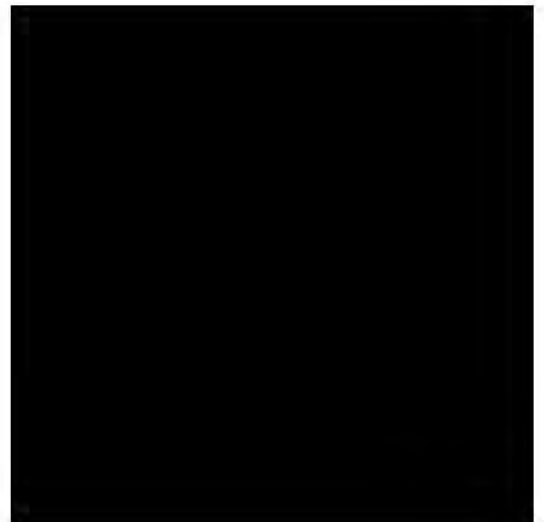
IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THIS DEED ON THE DAY AND YEAR FIRST BEFORE WRITTEN



The COMMON SEAL of)
SUFFOLK COUNTY COUNCIL)
was affixed in the presence of:)



Authorised Signatory



Executed as a deed by
STOWMARKET CARE CENTRE LIMITED
acting by a director in the presence of:



(Signature of Director)]

Signature of Witness



Full Name of witness (BLOCK CAPITALS)



Address of Witness:



O

Executed as a deed by STOWMARKET
CARE CENTRE 2 LIMITED acting by a
director in the presence of:

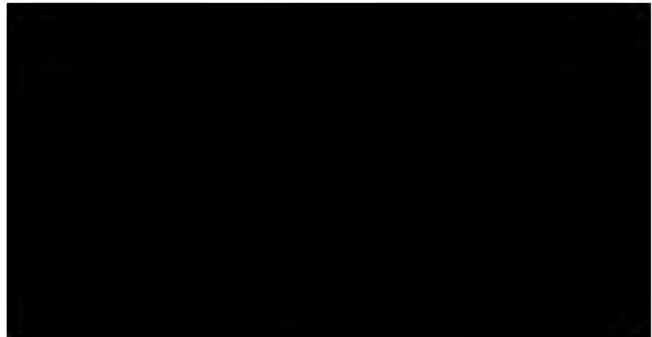


Signature of Witness

(Signature of Director)



Executed as a deed by
PEAR BLOSSOM GLOBAL LIMITED



Signature



.....

Name of witness



Address of Witness

Occupation: