

DATED

23 October 2020  
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PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE TOWN &  
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT CORNER FARM, BANYARDS GREEN, LAXFIELD,  
WOODBIDGE IP13 8ES

between

SOUTHQUAY ENTERPRISES LIMITED

and

SUFFOLK COUNTY COUNCIL

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THIS DEED is dated *23 October 2020*

- (1) SOUTHQUAY ENTERPRISES LIMITED incorporated and registered in England and Wales with company number 0546737 Charity Hall, Charity Lane, Bedfield, Woodbridge, Suffolk, IP13 7HJ (**Owner**)
- (2) SUFFOLK COUNTY COUNCIL of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX. (**Council**).

#### **BACKGROUND**

- (A) The Council is the County Highways authority for the for the area in which the Property is situated.
- (B) The Owner owns the Property and has made the Planning Application and is proposing to carry out the Development.
- (C) In accordance with Mid Suffolk District Council's Local Plan on planning contributions the Owner gives this undertaking to perform the obligations set out in this deed.

#### **AGREED TERMS**

##### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this deed.

##### **1.1 Definitions:**

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations; demolition works; site clearance; ground investigations; site survey works; temporary access construction works and erection of any fences and hoardings around the Property.

**Commenced and Commences** shall be construed accordingly.

**Commencement Date:** the date of Commencement of Development.

**Development:** the development of the Property described in the Planning Application.

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

**Index Linked:** the increase or decrease in any sum referred to in the Schedule by an amount equivalent to the increase or decrease in the Index to be calculated in accordance with Clause 11 of this Deed and "Index Linking" shall be construed accordingly;

**Interest:** interest at four (4) per cent above the minimum lending rate of the Bank of England from time to time

**Plan:** the plan attached to this deed.

**Property:** the freehold land at Corner Farm, Banyards Green, Laxfield, Woodbridge, IP13 8ES shown edged red on the Plan being part of the land registered at HM Land Registry with absolute title under title number SK 308202.

**Planning Application:** an application for outline planning permission registered by the Mid Suffolk District Council on 24 June 2020 and validated on 30 June 2020 under reference number DC/20/02523.

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application.

**TCPA 1990:** Town and Country Planning Act 1990.

**TRO Contribution:** The sum of £10,000 (Ten Thousand Pounds) subject to Index Linking to be paid to the Council to fund a Traffic Regulation Order and associated works for the management of traffic safety in the vicinity of the development including officer time.

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses are to the clauses of this deed.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

## **2. STATUTORY PROVISIONS**

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

## **3. COVENANTS WITH THE COUNCIL**

The Owner covenants with the Council:

- (a) to comply with the obligations set out in the Schedule.
- (b) to give at least 5 Working Days written notice to the Council of the Commencement Date.
- (c) to pay to the Council on the completion of this deed its proper legal costs incurred in the negotiation, preparation and execution of this deed together with a monitoring fee of £412 (Four hundred and twelve pounds)

**4. RELEASE**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

**5. DETERMINATION OF DEED**

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

**6. LOCAL LAND CHARGE**

This deed is a local land charge and shall be registered as such by Mid Suffolk District Council.

**7. OWNERSHIP**

7.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

7.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 20 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

**8. NOTICES**

8.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

8.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at: Endeavour House, 8 Russell Road, Ipswich, IP1 2BX;



- (b) to the Owner at: Charity Hall, Charity Lane, Bedfield, Woodbridge, Suffolk, IP13 7HJ;

or as otherwise specified by the relevant person by notice in writing to each other person.

8.3 Any notice or other communication given in accordance with clause 8.1 and clause 8.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

8.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

8.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 9. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

## 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. INDEXATION

Any sum referred to in the Schedule (unless the context reads otherwise) shall be increased or decreased by an amount equivalent to the increase or decrease 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) A is the sum payable under this Deed;
- (b) B is the original sum calculated as the sum payable;

- (c) C is the Index for the month two (2) months before the date on which the sum is payable;
- (d) D is the Index for the month two (2) months before the date of this Deed; and
- (e) C/D is Not less than 1

**12. GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



#### THE SCHEDULE

1. The Owner covenants to pay the TRO Contribution to the Council prior to the Commencement of Development.
2. The Owner covenants not to Commence Development until the TRO Contribution has been paid in full to the Council.

Executed as a deed by SOUTHQUAY  
ENTERPRISES LIMITED acting by a  
director, in the presence of:

.....  
SIGNATURE OF WITNESS

.....  
NAME OF WITNESS

.....  
ADDRESS OF WITNESS

.....  
OCCUPATION OF WITNESS

