

Dated

20TH JANUARY 2021

~~2020~~

(1) GOLDSTAR TRANSPORT LIMITED

(2) DESTINY TRADING LIMITED

to

(3) SUFFOLK COUNTY COUNCIL

**Planning Obligation By Way Of Unilateral Undertaking Under Section
106 Of The Town & Country Planning Act 1990 Relating To Land At
Elmswell Road, Woolpit, Bury St Edmunds**



21 Springfield Lyons Approach, Chelmsford, Essex, CM2 5LB
KML/COM1577

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This Deed is dated 20TH JANUARY 2021

Parties

- (1) GOLDSTAR TRANSPORT LIMITED incorporated and registered in England and Wales with company number 02953405 whose registered office is at Parker Avenue, Felixstowe, Suffolk, IP11 4HF (the **Owner**);
- (2) DESTINY TRADING LIMITED incorporated and registered in the Isle of Man with company number 103975C whose registered office is at 6th Floor, Victory House, Prospect Hill, Douglas, Isle of Man IM1 1EQ (the **Mortgagee**);

To:

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

Background

- (A) The County Council is the local planning authority and the highway authority for the purposes of the TCPA 1990 for the area in which the Property is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Owner owns the Property subject to a mortgage in favour of the Mortgagee.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Mortgagee is the registered proprietor of the charge dated 10 March 2017 referred to in entry number 1 of the charges register of Title number SK314956 and entry number 4 of the charges register of Title number SK316728 and has agreed to enter into this deed to give its consent to the terms of the unilateral undertaking.
- (E) In accordance with the 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:

Base Rate: the base rate from time to time of Bank of England.

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.

Commencement Date: the date of Commencement of Development.

Contribution: the sum of £5,000 (five thousand pounds) towards the cost of the construction of a footway/cycleway between Woolpit and Elmswell villages.

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

Default Interest Rate: 4% per annum above the Base Rate.

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

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

Index Linked: 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

"Index Linking" shall be construed accordingly;

Plan: the plan attached to this deed.

Property: the freehold land at Elmswell Road, Woolpit, Bury St Edmunds shown edged red on the Plan being part of the land registered at HM Land Registry with absolute title under title numbers SK314956 and SK316728

Local Plan: Mid Suffolk Core Strategy 2008 and Focussed Review 2012

Planning Application: an application for planning permission registered by the Council on 14 February 2020 under reference number 20/00779.

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.

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 County Council and 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 County Council in accordance with section 106 of the TCPA 1990.

3. Covenants With the County Council

- 3.1 The Owner covenants with the County Council:
- (a) to pay the Contribution to the County Council within 7 Working Days of the Commencement Date.
 - (b) to give at least 5 Working Days written notice to the County Council of the Commencement Date.
 - (c) to pay to the County Council on the completion of this deed its proper legal costs incurred in the preparation and negotiation of this deed in the sum of ££720.
 - (d) to pay to the County Council £412.00 (four hundred and twelve pounds) on the completion of this deed towards the costs incurred in monitoring the obligations contained in this deed.

4. Indexation of Contribution

- 4.1 All financial contributions payable to the County Council shall be Index Linked.

4.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the County Council shall advise the Owner in writing.

5. Mortgagee's Consent

5.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

5.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

6. 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.

7. Determination of Deed

7.1 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.

8. Local Land Charge

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

9. Interest on Late Payment

If the Contribution has not been paid to the County Council prior to or on the Commencement Date, the Owner shall pay the County Council interest on the Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the date of payment.

10. Ownership

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

10.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council and the County 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.

11. Notices

- 11.1 A notice 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.
- 11.2 Any notice to be given under this deed must be sent to the relevant party as follows:
- (a) to the Owner at: Parker Avenue, Felixstowe, Suffolk, IP11 4HF marked for the attention of Matthew Ashworth, Managing Director; and
 - (b) to the Mortgagee at: Graham Lawrence marked for the attention of Graham Lawrence Destiny Trading Ltd, Seven Acres, Geln Tramman, Lezayre, IOM;
 - (c) to the County Council at: The Executive Director of Growth Highways and Infrastructure (or a duly appointed successor), Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX
- or as otherwise specified by the relevant person by notice in writing to each other person.
- 11.3 Any notice given in accordance with clause 11.1 and clause 11.2 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.
- 11.4 A notice given under this deed shall not be validly given if sent by e-mail.
- 11.5 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.

12. Third Party Rights

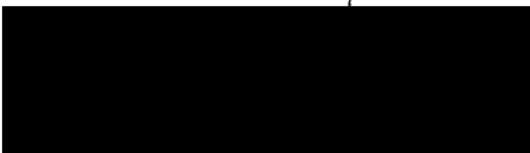
A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

13. 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.

Executed as a deed by
GOLDSTAR TRANSPORT LIMITED acting
by a director in the presence of:



Director - signature

Signature of witness: 

Name of witness: *MARTIN SMITH*

Occupation of witness: *GENERAL MANAGER*

Address of witness: 

MATTHEW ASHWORTH

Director - print name

Executed as a deed by
DESTINY TRADING LIMITED acting
by a director in the presence of:

.....

Director - signature

Signature of witness:

.....

Name of witness:

Director - print name

Occupation of witness:

Address of witness: