

DATED

17<sup>TH</sup> June 2021

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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 CARLTON MERES COUNTRY PARK, KESALE**

PARK HOLIDAYS UK LTD (1)

STANDARD LIFE ASSURANCE LIMITED (2)

NATWEST MARKETS PLC (3)

to

SUFFOLK COUNTY COUNCIL (4)

**THIS DEED OF UNDERTAKING IS MADE** this 17<sup>TH</sup> day of June 2021

**AND IS GIVEN BY:**

1. **PARK HOLIDAYS UK LTD** (Company Registration No.02434151) whose registered office is at Glovers House Glovers End Bexhill on Sea East Sussex TN39 5ES (the "Owner")
2. **STANDARD LIFE ASSURANCE LIMITED** (Company Registration No. SC286833) whose registered office is at Standard Life House, 30 Lothian Road, Edinburgh, EH1 2DH ("Standard Life")
3. **NATWEST MARKETS PLC** (Company Registration No. SC090312) whose registered office is at 36 St Andrew Square, Edinburgh, EH2 2YB ("the Mortgagee")

**TO**

4. **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich Suffolk IP1 2BX ("the County Council")

**INTRODUCTION**

- (A) East Suffolk Council ("the District Council") is the local planning authority for the purposes of the Act for the area in which the Site.
- (B) The County Council is the highway authority and also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations given to the County Council contained in this Deed are enforceable.
- (C) Standard Life is the freehold owner of the Site which is registered under title number SK254787; SK249819; SK241006; and SK183345. The Owner is the leasehold owner of the Site which is registered at the Land Registry under title number SK392932. The Mortgagee is the registered proprietor of the legal charge dated 27 September 2018 and registered at entries C6 and C7 on title number SK392932.
- (D) The Owner submitted the Application (Ref: DC/19/3196/FUL) to the District Council and on 1<sup>st</sup> April 2020 the District Council resolved to refuse the Application.
- (E) The Owner has submitted the Appeal to the Secretary of State against the District Council's refusal of the Application.
- (F) The Parties agree that the obligations contained in this Deed are necessary to make the development acceptable in planning terms directly related to the development and fairly and reasonably relate in scale and kind to the Development in accordance with the Act and Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- (G) This Deed is made pursuant to Section 106 of the Act and to the extent that any obligations contained in this Deed are not planning obligations for the purpose of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- "Act" means the Town and Country Planning Act 1990 (as amended);
- "Appeal" means the appeal submitted to the Secretary of State for Housing, Communities and Local Government ("the Secretary of State") following the refusal of the Application by the District Council and allocated reference number APP/X3540/W/20/3259654;
- "Application" the application for planning permission validated by the District Council on the 28<sup>th</sup> August 2019 for the Development and allocated reference number DC/19/3196/FUL and refused by the District Council on 1<sup>st</sup> April 2020 and subject of the Appeal;
- "Appeal Decision" means the decision issued by the Planning Inspectorate confirming whether the Appeal has been successful or not;
- "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 on the Site other than (for the purposes of this Deed and for no other purposes) operations consisting of site clearance, demolition work, archaeological investigations, 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 and the temporary display of site notices or advertisements and "Commence Development" and "Commencement Date" shall be construed accordingly;
- "Contribution" means the sum of £16,500 (sixteen thousand, five hundred pounds) sought by the County Council for a speed limit reduction and associated highway improvement works to the A12/B1119 road junction (including but not limited to any associated legal costs and officer costs) pursuant to the Development;
- "Deed" means this Deed of agreement together with all Schedules and Appendices;
- "Development" means the 'Use of land for the stationing of 50 No. static holiday caravans; children's play area, recreation space and associated facilities' as set out in the 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
- "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 8 of this Deed and "Index Linking" shall be construed accordingly;



"Inspector"	means a planning inspector appointed by the Secretary of State to determine the Appeal;
"Planning Permission"	means any planning permission for the Development to be granted in respect of the Site pursuant to the Application and the Appeal;
"Site"	means the site at Carlton Meres Country Park shown edged red on the attached plan

## 2 CONSTRUCTION OF THIS DEED


- 2.1 Where in this Deed reference is made to any clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph 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 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 the Owner, Standard Life and the Mortgagee shall include the successors in title to the Owner, Standard Life and the Mortgagee and to any person deriving title through or under the Owner, Standard Life and the Mortgagee and in the case of the County Council its successor or successor in title to its relevant statutory functions;
- 2.7 The headings are for reference only and shall not affect construction;

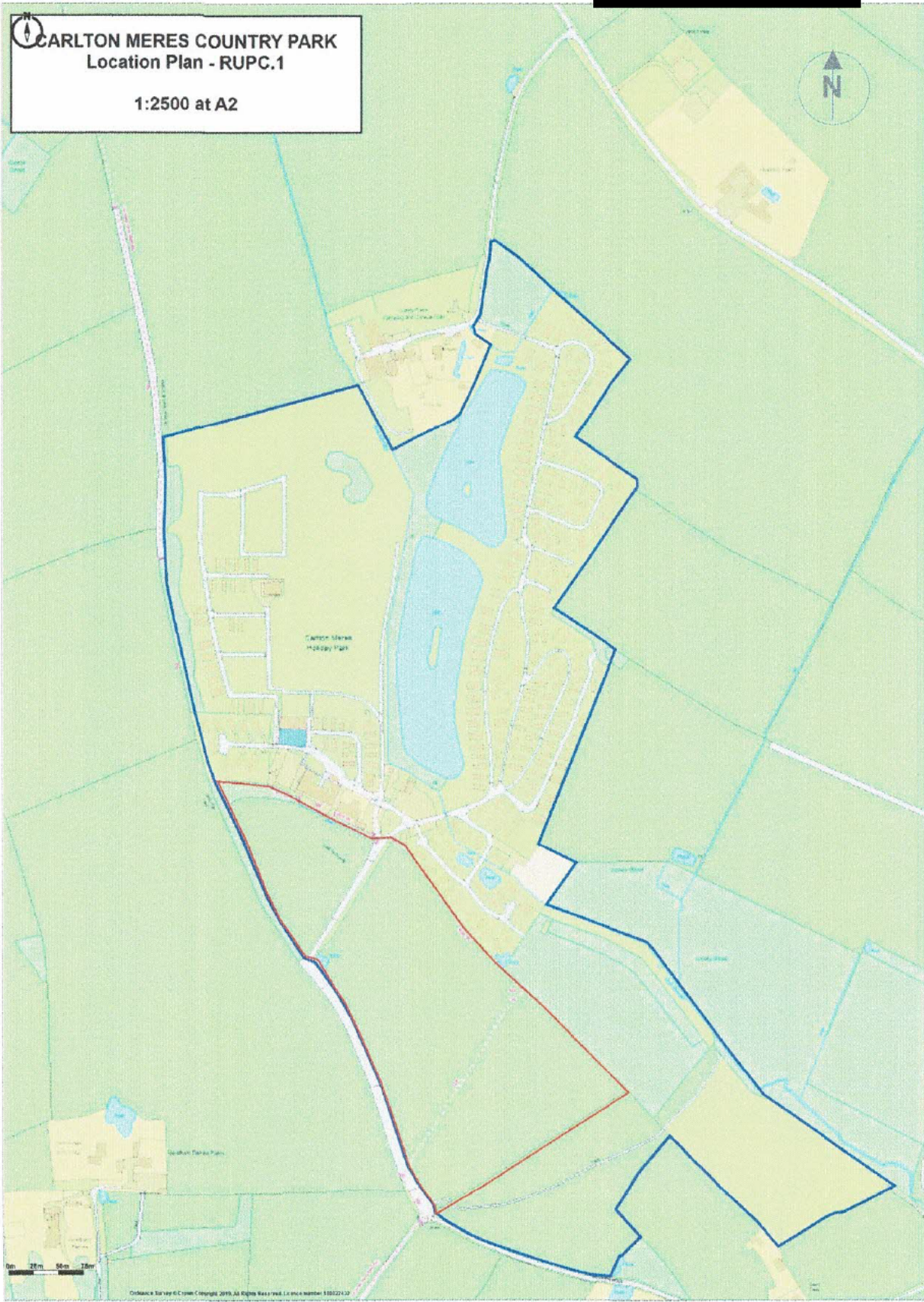
## 3 LEGAL BASIS

- 3.1 This agreement is a Deed made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 section 12 and 93 of the Local Government Act 2003 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 County Council in the case of covenants given to the County Council against the Owner and their successors in title.

## 4 CONDITIONALITY



 **CARLTON MERES COUNTRY PARK**  
Location Plan - RUPC.1  
1:2500 at A2





4.1 The planning obligations contained in Clause 5 and the Schedule to this Deed are conditional upon the:

4.1.1 the grant of Planning Permission subsequent to the Appeal.

## 5 THE OWNER COVENANTS

5.1 The Owner covenants with the County Council as set out in Schedule One

## 6 STANDARD LIFE AND MORTGAGEE CONSENT

6.1 Standard Life acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed PROVIDED THAT Standard Life shall have no liability under this Deed unless it takes possession of the Site in the event of the termination of the Owner's leasehold interest in which case Standard Life will be bound by the provisions of this Deed as a person deriving title from the Owner.

6.2 The Owner shall notify Standard Life in writing within 28 days of the Contribution having been paid to the County Council confirming that the Contribution has been paid to the County Council pursuant to this Deed.

6.3 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of its charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall have no liability under this Deed unless it takes possession of the Site in which case the Mortgagee will be bound by the provisions of this Deed as a person deriving title from the Owner.

## 7 MISCELLANEOUS

7.1 The Owner shall pay to the County Council on completion of this Deed:

7.1.1 the reasonable legal costs incurred in the negotiation and completion of this Deed; and

7.1.2 a monitoring fee of £412 (four hundred and twelve pounds)

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 save by the County Council;

7.3 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the Owner, Standard Life, the Mortgagee or County Council;

7.4 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;

7.5 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, Standard Life and the Mortgagee (where such has an interest in the Site at the relevant time)) it is modified by any statutory procedure or expires prior to Commencement of Development but is in all other respects irrevocable save with the written consent of the County Council;

- 7.6 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 freehold or long leasehold interest in the Site or part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest;
- 7.7 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 (whether or not on appeal) after the date of this Deed;
- 7.8 In the event that any new planning applications are made in respect of the development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act;
- 7.8.1 the obligations in this deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission arising from the Planning Permission granted pursuant to Section 73 of the act; and
- 7.8.2 the definitions of development Application and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the District Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and require pursuant to a determination under section 73 of the Act whether by way of a new deed or supplementary deed pursuant to section 106 of the Act or a modification to section 106A of the Act;
- 7.9 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council and County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions;
- 7.10 This Deed is a local land charge and shall be registered as such by the District Council

## 8 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.

## 9 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;
- (c) 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

10 JURISDICTION

This deed is governed by and interpreted in accordance with the law of England and subject to the non-exclusive jurisdiction of the courts of England.

11 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.



## **SCHEDULE 1**

- 1 The Owner covenants with the County Council to perform and observe the covenants obligations restrictions and requirements contained in this Deed
- 2 The Owner covenants to pay before Commencement of Development the Contribution of £16,500 to the County Council for highway improvements to the A12/B1119 pursuant to the Development
- 3 The Owner covenants with the County Council to give at least 5 working days advance written notice to the County Council of the date on which the Commencement of Development will take place.

