

DATED

14 July

2023

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UNILATERAL OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990 land at Mill Farm Field Somerleyton Suffolk

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in favour of

(1) SUFFOLK COUNTY COUNCIL

**Ashtons**  
LEGAL

Chequers House  
77-81 Newmarket Road  
Cambridge  
CB5 8EU

Ref: BMG/303166-1

THIS UNILATERAL OBLIGATION is made

14<sup>th</sup> July

2023

and is given by

- (1) **THE HONOURABLE HUGH FRANCIS SAVILE CROSSLEY** of  
Somerleyton Hall Somerleyton Suffolk NR32 5QL ("the **Owner**")

IN FAVOUR OF

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

**INTRODUCTION:-**

- (A) For the purposes of the 1990 Act, the County Council is a local planning authority for the area within which the Site is located and the authority which is entitled to enforce the obligations contained in this Deed.
- (B) The County Council is the education authority for the area in which the Site is located.
- (C) The Owner is the freehold owner of the whole of the Site which is registered at HM Land Registry under title number Title Number SK 272796 which is free from encumbrances that would prevent the Owner entering into this Deed.
- (D) The Owner has submitted the Planning Application to the Council and the Council has decided to approve the Planning Application
- (E) This Unilateral Obligation is designed to secure the provision of a Secondary Education Transport Contribution and Monitoring Fee as part of the Development to the extent that it is necessary to ensure that the Development is acceptable in planning terms

**NOW THIS DEED WITNESSES** as follows:-

**OPERATIVE PART**

1. **DEFINITIONS**

1.1 In this Deed the following terms and expressions have the following meanings:-

**"1990 Act"** means the Town and Country Planning Act 1990 (as amended)

**"Commencement Date"** means the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56 of the 1990 Act and Commence the Development Commencement of Development and Commence Development shall be construed accordingly

**"County Council"** means the sum of four hundred and seventy six pounds

<b>Monitoring Fee"</b>	(£476)
<b>"Development"</b>	means the development as described in the Planning Application permitted on the Site pursuant to the Planning Permission
<b>"Late Payment Interest"</b>	interest at 4 per cent above the minimum lending rate of the Bank of England from time to time.
<b>"Occupation"</b>	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include daytime occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations and <b>"Occupy"</b> and <b>"Occupied"</b> shall mutatis mutandis be construed accordingly
<b>"Planning Application"</b>	means the application for full planning permission for the Development validated by the Council 15 October 2021 and allocated reference number DC/21/4745/FUL
<b>"Planning Permission"</b>	means the planning permission that may be granted for the Development in pursuance of the Planning Application subject to conditions upon the completion of this Deed
<b>"RPI Index"</b>	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor body
<b>"Secondary School Transport Contribution"</b>	means the sum of thirty six thousand one hundred and fifty pounds (£36,150) to be linked to the RPI Index to be used to fund school transport provision for a minimum of five years for secondary-age pupils
<b>"Site"</b>	the land as shown edged red for identification purposes only on the Plan attached to this deed.
<b>"Site Plan"</b>	means the plan attached to this Deed
<b>"Working Days"</b>	means Monday to Friday inclusive but excluding days which are public holidays

1.2 In this Deed:-

1.2.1 the clause headings do not affect its interpretation:-

(a) unless otherwise indicated, references to clauses and Schedules are to clauses



of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

- (b) references to any statute or statutory provision include references to:-
  - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
  - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- (c) references to the Site include any part of it;
- (d) references to any party in this Deed include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
- (e) "including" means "including, without limitation";
- (f) any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and
- (g) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.

1.3 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 2. EFFECT OF THIS DEED

- 2.1 This Unilateral Obligation is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the County Council.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council or County Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 The obligations in this Deed will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory

apparatus is situated or is to be situated) by the Owner to that statutory undertaker.

2.5 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Deed, whether or not pursuant to an appeal.

2.6 Save in respect of the obligations in this Deed expressly requiring compliance prior to Commencement of Development and which shall become operative on the issue of the Planning Permission this Deed shall thereafter come into effect on the Commencement of Development

### 3. COMMENCEMENT DATE

3.1 Save in respect of obligations expressly in this Deed requiring compliance prior to the Commencement Date and which will become operative on the issue of the Planning Permission this Deed will come into effect on the Commencement Date

3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:

3.2.1 site investigations or surveys;

3.2.2 site decontamination;

3.2.3 the clearance of the Site including demolition;

3.2.4 works connected with infilling;

3.2.5 works for the provision of drainage or mains services to prepare the Site for development together with access roads;

3.2.6 erection of fencing or boarding;

3.2.7 erection of boards advertising the development; or

3.2.8 the construction of a temporary site compound or a temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite.

### 4. OBLIGATIONS OF THE PARTIES

4.1 The Owner covenants with the County Council to comply with the obligations set out in the Schedules to this Deed.

4.2 The Owner covenants with the County Council to provide (so far as practical) not less than twenty (20) Working Days' notice in writing to the County Council of the anticipated Commencement Date and Notice of Commencement to the County Council no later than five (5) Working Days prior to the Commencement Date.

5. **INDEXATION**

Any sum referred to in the First Schedule save for the County Council Monitoring Fee shall be increased by an amount equivalent to the increase in the the Retail Prices 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:

- 5.1 A is the sum payable under this Deed;
- 5.2 B is the original sum calculated as the sum payable;
- 5.3 C is the Retail Prices Index for the month 2 months before the date on which the sum is payable;
- 5.4 D is the Retail Prices Index for the month 2 months before the date of this Deed; and
- 5.5 C/D is greater than 1

6. **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.

7. **TERMINATION OF THIS DEED**

- 7.1 This Deed will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date or the Planning Permission expires before the Commencement Date.
- 7.2 Where this deed comes to an end under Clause 7.1 this Deed should no longer be registered as a Local Land Charge register or otherwise to record the fact that it has come to an end and no longer affects the Site.

8. **NOTICES**

- 8.1 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party to or upon whom it is to be given or served at the address for that party given in this Deed or such other address in the United Kingdom as that party may by notice to the other parties hereto or their solicitors stipulate as that party's address for service of notice pursuant to this Deed or if not such address is given or stipulated at that party's last known address and any notice so given or served shall be deemed to be received and the date on which it is given or served shall be deemed to be 48 hours after posting. If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served at 9am on the next Working Day.

9. **DETERMINATION OF DISPUTES**

- 9.1 This Obligation is given on the condition that the County Council accepts that subject to Clause 9.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this Clause 9. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 9.2 For the purposes of this Clause 9 a "**Specialist**" is a person qualified to act as an expert in relation to the dispute having not less than ten (10) years'

professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

- 9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of any party to the dispute to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute (or failing Deed as nominated by any such party in writing)) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under Clause 9.4.
- 9.4 Any dispute over the identity of the Specialist is to be referred at the request of any party to the dispute to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute (or failing Deed as nominated by any such party in writing)).
- 9.5 The Specialist is to act as an independent expert and:-
- 9.5.1 each party to the dispute may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;
- 9.5.2 each party to the dispute is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 9.5.3 the Specialist is to be at liberty to call for such written evidence from the parties to the dispute and to seek such legal or other expert assistance as he or she may reasonably require;
- 9.5.4 the Specialist is not to take oral representations from the parties to the dispute without giving those parties the opportunity to be present and to give evidence and to cross examine each other;
- 9.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 9.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 9.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 9, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist or failing such decision will be shared equally between the parties to the dispute.



9.7 This Clause 9 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts of England.

10. **JURISDICTION**

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

11. **EXECUTION**

The Owner has executed this Deed as a deed and it is delivered on the date set out above.

**SCHEDULE 1**

**SECONDARY  
TRANSPORT  
CONTRIBUTION**

**1. Secondary Transport Contribution**

- 1.1 The Owner covenants to the County Council to pay the Secondary School Transport Contribution (Index Linked to the RPI Index) to the County Council prior to the Commencement of Development
- 1.2 The Owner hereby covenants not to Commence or permit or allow the Commencement of Development unless and until the Secondary School Transport Contribution (Index Linked to the RPI Index) has been paid in full to the County Council.

**2. County Council Monitoring Fee**

- 2.1 The Owner covenants to the County Council to pay the County Council Monitoring Fee to the County Council on the completion of this Deed
- 2.2 The Owner hereby covenants not to Commence or permit or allow the Commencement of Development unless and until the County Council Monitoring Fee has been paid in full to the County Council.

IN WITNESS whereof the Owner has executed this Deed on the day and year first before written.

SIGNED AS A DEED by  
THE HONOURABLE HUGH  
FRANCIS SAVILE CROSSL  
in the presence of:



Name: JULIE PLUMB

Signature: [Redacted]

Occupation: PROPERTY MANAGER

Address: .....  
.....  
.....  
.....  
..... SOMERLEYTON

The Estate Office, Manor Barn  
Herringfleet Road, Lovingland  
Suffolk NR32 5QS