

DATE 25<sup>th</sup> January 2024

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) TAYFEN ROAD DEVELOPMENTS LIMITED

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**Planning Obligation by Deed under Section 106  
of the Town and Country Planning Act 1990**

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relating to

**Land North of Tayfen Road Bury St Edmunds Suffolk**

West Suffolk Council  
West Suffolk House  
Western Way  
Bury St. Edmunds  
Suffolk

DATE 25th January

2023/4

**PARTIES:**

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **TAYFEN ROAD DEVELOPMENTS LIMITED** (Company number 8818385) of Salisbury House Station Road Cambridge CB1 2LA (hereinafter called the "**Owner**")

(together the "**Parties**")

**INTRODUCTION**

- A The Council is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- B The County Council is the local library authority and is 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 contained in this Deed are enforceable
- C The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number SK93081
- D The Application has been submitted to the Council and the Council has resolved to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed intended to regulate the Development and to secure the planning obligations contained in this Deed
- E The Council and the County Council enter into this Deed to the intent that the requirements of the Council's and the County Council's policies are met and that any objections by the Council or the County Council to the grant of planning permission on the basis of those policies are overcome

F The Council and the County Council consider and the Owner acknowledges that the Development should not take place until certain restrictions regulating the use of the Site 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

G The Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy 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 full application for planning permission to develop the Site received by the Council on the 27 June 2022 and bearing the Council's reference number DC/22/1137/FUL

"BCIS Index" the All In Tender Price Index published by the Building Cost Information Service 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

"BCIS Indexed" the increase in any sum referred to in the Second Schedule and the Third Schedule by an amount equivalent to the increase in the BCIS Index 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 on the Site other than (for the purposes of this Deed and for no other purpose) operations

	consisting of site clearance, demolition work, archaeological investigations, ecological surveys, 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 any temporary means of enclosure or temporary landscaping, haul roads, the temporary display of site notices or advertisements and "Commenced" and "Commence Development" shall be construed accordingly
"Completion of Development"	the date that the Development is first Occupied
"Development"	the development of the Site in accordance with the Planning Permission for a. up to 80 bed care home including garden / training room bicycle mobility scooter and refuse stores car park and soft landscaping b. new vehicular and pedestrian access and associated works
"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"Library Contribution"	seven thousand two hundred pounds (£7,200) BCIS Indexed
"NHS Contribution"	twenty thousand pounds (£20,000) BCIS Indexed
"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
"Outline Agreement"	the agreement made pursuant to section 106 of the Act dated 12 October 2017 between (1) St Edmundsbury Borough Council (2) Suffolk

County Council (3) Tayfen Road Developments Limited and (4) C. Hoare & Co. as may be amended from time to time

"Planning Permission"	the full planning permission subject to conditions as may be granted by the Council pursuant to the Application and subsequent planning permissions for the Development granted by the Council pursuant to Section 73 of the Act
"Site"	the land forming part of land registered with the Land Registry under title number SK93081 shown edged red on the Site Plan
"Site Plan"	the plan marked "Site Plan" attached to the First Schedule of 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 the personal representatives of that party and any party deriving title through or under that party and in the case of the Council and or the County Council the successors to their respective statutory functions
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document
- 2.8 References to a "Site Plan" in this Deed shall be references to the plan attached to the First Schedule of this Deed bearing the relevant plan number or any amended plans as shall be agreed between the Owner and the Council and the County Council
- 2.9 The obligations in this Deed shall not be enforceable against:
  - 2.9.1 any individual person who is an occupier for residential purposes within the Site
  - 2.9.2 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services
  - 2.9.3 any mortgagee of the Site unless it has taken possession of all or any part of the Site pursuant to the terms of its security
- 2.10 The headings are for reference only and shall not affect construction
- 2.11 Any covenant by the Owner 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 and 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 Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities against the Owner and their successors in title

3.3 This Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act

#### **4. CONDITIONALITY**

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission and

4.1.2 the Commencement of Development

SAVE FOR the provisions of this clause and clauses 7.3, 7.4, 7.5, 7.6, 7.10, 7.12, 12, 13, 14, 18 19, 20 and paragraph 2 of the Fourth Schedule (related to legal and monitoring costs change in ownership right of entry dispute resolution jurisdiction delivery and issue of Planning Permission) and any other relevant provisions which shall come into effect immediately upon completion of this Deed

#### **5. THE OWNERS COVENANTS**

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

5.2 The Owner covenants with the County Council as set out in the Third Schedule

#### **6. THE COUNCILS AND THE COUNTY COUNCILS COVENANTS**

6.1 The Council covenants with the Owner as set out in the Fourth Schedule

6.2 The County Council covenants with the Owner as set out in the Fifth Schedule

#### **7. MISCELLANEOUS**

7.1 The Owner shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests either of the Council and or the County Council and their duly authorised officers or agents to have

access to any part or all of the Site prior to first Occupation or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein

- 7.2 The Owner agrees declares and covenants both with the Council and the County Council that they 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
- 7.3 The Owner covenants to pay to the Council on or before completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.4 The Owner covenants to pay to the County Council on or before 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
- 7.5 The Owner further covenants to pay to the Council five hundred pounds (£500) and to pay the County Council four hundred and seventy six pounds (£476) on or before completion of this Deed towards the costs of reporting and monitoring the obligations contained in this Deed
- 7.6 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.7 This Deed shall be registered as a local land charge by the Council
- 7.8 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner from either the Council or 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 Council by the Assistant Director of Growth or officer acting under his/her hand and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure or duly appointed successor or officer acting under his/her hand
- 7.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed



- 7.10 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
- 7.11 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 Owner) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 7.12 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 Site (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 Site notwithstanding the retention of easements or the benefit of covenants restrictions or reservations in respect of it
- 7.13 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
- 7.14 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 7.15 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to either the Council or the County Council
- 7.16 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the 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
- 7.17 The Owner covenants and warrants to the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the

Site and all estates and interests therein (with the exception of the registered charge dated 11 July 2014 in favour of C.Hoare & Co ( company registration number 240822) of 37 Fleet Street, London EC4P 4DQ)

**8. WAIVER**

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

**9. CHANGE IN OWNERSHIP**

The Owner agrees with the Council and the County Council to give each of them independently written notice of any transfer in ownership of any of any freehold interests in the Site occurring before all positive obligations in Second and Third Schedules of this Deed have been discharged such notice to be served within twenty one (21) Working 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 Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to the transfer or grant of leases of electricity sub-stations or gas governors or the like

**10. INDEXATION**

All sums referred to in the Second Schedule and the Third 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 or paid (whichever is earlier) using the application of the formula  $A = B \times (C/D)$  where:

- 10.1 A is the sum payable under this Deed
- 10.2 B is the original sum calculated as the sum payable
- 10.3 C is the BCIS Index figure for the month two (2) months before the date on which the sum is payable or is paid (whichever is earlier)
- 10.4 D is the BCIS Index figure for the month two (2) months before the date of Planning Permission pursuant to the Application was granted

10.5 C/D is greater than 1

## **11. INTEREST**

If any payment due under this Deed is not paid on time Late Payment Interest will be payable from the date payment is due to the date of payment

## **12. VAT**

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

## **13. NOTICES**

13.1 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 13.2

13.2 The address for any notice or other written communication in the case of each of the Parties to this Deed shall be as follows

The Council	The Director of Planning & Growth West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU
The County Council	The Executive Director of Growth Highways and Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX
The Owner	Salisbury House Station Road Cambridge CB1 2LA

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

13.4 The Owner covenants to inform the Council and the County Council by way of written notice within seven (7) Working Days following:



13.4.1 Commencement of Development

13.4.2 The Completion of Development

#### **14. DISPUTE RESOLUTION**

14.1 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) which cannot be resolved by prior agreement between the parties to the dispute ("the Dispute Parties") shall be referred before a single Expert (the "Expert")

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

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

14.3.1 if the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed 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

14.3.2 if the 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

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

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



- 14.4 In the event of a reference to an Expert the Dispute Parties agree to:
- 14.4.1 prosecute any such reference expeditiously and
  - 14.4.2 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
- 14.5 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
- 14.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) Working Days of the hearing
- 14.7 The award shall be final and binding (except in the case of manifest error or fraud) both on the Dispute 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
- 14.8 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed
- 14.9 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages and any other means of enforcing this Deed and consequential and interim orders and relief
- 14.10 The Expert's costs shall be payable by the Dispute Parties in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares

**15. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED**

Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Council or the County Council for confirmation to that effect and upon the Council or County Council being satisfied that the relevant Deed obligation and covenant as the case may be has been satisfied the Council or the County Council shall forthwith issue confirmation to such effect

**16. APPROVALS**

Where any matters are approved by the Council under the terms of this Deed further amendments thereof if approved by the Council shall replace those previously approved

**17. COMMUNITY INFRASTRUCTURE LEVY**

The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 the obligations imposed in this Deed 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. RELEASE**

The Site shall be released from the terms of the Outline Agreement and no party shall be liable for any obligations contained in the Outline Agreement by virtue of any interest it holds in the Site.

**19. JURISDICTION**

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

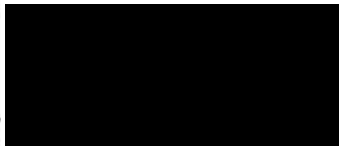
**20. DELIVERY**

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  
WEST SUFFOLK COUNCIL**

was affixed in the presence of:

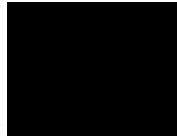


Authorized Officer



**THE COMMON SEAL OF  
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



Authorized Officer



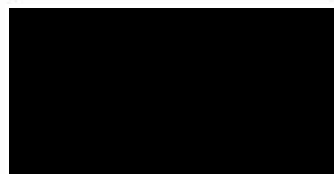
**EXECUTED as a DEED BY  
TAYFEN ROAD DEVELOPMENTS LIMITED**

Acting by a director

In the presence of



Witness name: EMMA BUTLER



## FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owner's land forming part of land registered with the Land Registry under title number SK93081

## SITE PLAN





## **SECOND SCHEDULE**

### **THE OWNER COVENANTS WITH THE COUNCIL:**

#### **1. NHS CONTRIBUTION**

- 1.1 To pay to the Council the NHS Contribution prior to the first (1st) Occupation of the Development
- 1.2 Not to Occupy or permit Occupation of the Development until the NHS Contribution has been paid to the Council

### **THIRD SCHEDULE**

#### **THE OWNER COVENANTS WITH THE COUNTY COUNCIL**

##### **1. LIBRARY CONTRIBUTION**

- 1.1 To pay to the County Council the Library Contribution prior to the first (1st) Occupation of the Development
- 1.2 Not to Occupy or permit Occupation of the Development until the Library Contribution has been paid to the County Council

## **FOURTH SCHEDULE**

### **THE COUNCIL COVENANTS WITH THE OWNER:**

#### **1. NHS CONTRIBUTION**

- 1.1 To use the NHS Contribution on a project or projects that help address the demand within the catchment surgeries serving the Development only
- 1.2 If requested to do so in writing after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year to pay within one month of such request to any person such amount of the NHS Contribution paid by that person which has not been committed or expended by the Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end PROVIDED THAT if at the point of payment the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 1.3 When the NHS Contribution paid to the Council pursuant to this Deed has been spent or committed the Council shall upon written request by the Owner after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

## **FIFTH SCHEDULE**

### **THE COUNTY COUNCIL COVENANTS WITH THE OWNER:**

#### **1. LIBRARY CONTRIBUTION**

- 1.1 To use the Library Contribution towards the provision of lending stock to enhance and improve IT equipment and associated materials for a library service and improve existing library provision within the vicinity of the Development only
- 1.2 If requested to do so in writing after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year to pay within one month of such request to any person such amount of the Library Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if at the point of payment the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 1.3 When the Library Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to