DATE: 202[ ]

[*insert name of Owner here*]

**[and]**

[*insert name of any Second Owner here (if applicable)*]

**[and]**

[*insert name of Mortgagee here (if applicable)*]

PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING Pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)

Relating to the Development of land at [*insert address of land from Planning Application here]*

Ref:  **DOV/ /00**

**THIS DEED** is made the day of 202[ ]

**GIVEN BY**

1. **[ of ] (“the [Owner/ First Owner]”)[; and**
2. **[ of ] (“the Second Owner)**
3. **[ of ] (the Mortgagee”]**

**TO**

**DOVER DISTRICT COUNCIL (“the Council”)** of White Cliffs Business Park, Dover, Kent, CT16 3PJ

**BACKGROUND**

**(A)**  The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.

**(B)**  The Owner[s] own[s] the Property and [has/have] made the Planning Application and [is/are] proposing to carry out the Development.

**[(C)** The Mortgagee is the registered proprietor of the charge dated [ ] referred to in entries [ ] and [ ] of the Charges Register of the Title and has agreed to enter into this Deed to give its consent to the terms of 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:

1. demolition works;
2. site clearance;
3. ground investigations;
4. site survey works;
5. temporary access construction works;
6. archaeological investigation; and
7. erection of any fences and hoardings around the Property.

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

**Council:**  DOVER DISTRICT COUNCIL of White Cliffs Business Park, Dover, Kent, CT16 3PJ

**Council’s Costs:** the sum of £250 as a contribution towards the Council’s legal and administrative cost incurred in drafting, reviewing and registering this deed.

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

**Index:** the “all Items” index figure of the Index of Retail Prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered

**Interest:** interest at 4 per cent above the base rate of the Bank of England from time to time

**Monitoring Fee:** means the sum of £250 paid as a contribution towards the Council’s costs of monitoring the compliance of the Development with the terms of this deed.

**[Owners:** means the First Owner and the Second Owner together**]**

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

**Property:**  the freehold land at [*insert description of land from Land Registry Property Register*] shown edged red on the Plan and registered at HM Land Registry under the Title.

**Planning Application:**  an application for planning permission received by the Council on [ ] and given reference number DOV/ / .

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

**SPA Contribution:** means the sum of £[*please insert sum here*] paid as a contribution towards the Council’s Thanet Coast and Sandwich Bay SPA Strategic Access Mitigation and Monitoring Strategy dated March 2023

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

**Title:** [*please insert Land Registry Title number here*]

**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 **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.

**1.11**

References to clauses are to the clauses of this deed.

**1.12**

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.

**1.13**

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.*](#co_anchor_a1023553_1) 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.*](#co_anchor_a1023553_1) 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 pay the Council’s Costs to the Council prior to the Commencement of Development

(b) to pay the SPA Contribution to the Council prior to the Commencement of Development

(c) to pay the Monitoring Fee to the Council prior to the Commencement of Development

**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:

1. expires before the Commencement of Development;
2. is varied or revoked other than at the request of the Owner; or
3. 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 the 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.*](#co_anchor_a1023553_1) have been complied with the Owner will give to the Council within 10 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:

1. 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 to be given under or in connection with this deed must be in writing and must be:

1. delivered by hand; or

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

**8.2**

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

1. to the Council at: Dover District Council, White Cliffs Business Park, Dover, Kent, CT16 3PJ marked for the attention of the Head of Planning and Development with a copy to Developer.Contributions@dover.gov.uk;

(b)  to the Owner at: [*insert address at which notices should be served on the Owner here*];

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

**8.3**

Any notice given in accordance with [*Clause 8.1*](#co_anchor_a995745_1) and [*Clause 8.2*](#co_anchor_a93493_1) will be deemed to have been received:

1. 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;

1. 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**

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.**   **MORTGAGEE’S CONSENT**

**9.1**

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.

**9.2**

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.]

**10**. **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.

**11. INDEXATION**

Any sums which become payable to the Council under this Deed (other than the Council’s Costs) shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

**12. OVERDUE PAYMENT**

In the event of any delay in making payment required under this Deed Interest shall be payable on the amount payable from the date that the relevant payment falls due to the date of actual payment.

**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.

|  |  |  |
| --- | --- | --- |
| Signed as a deed by [*insert name of Owner/First Owner here*]    in the presence of [*insert name of witness here*]  of [*insert witness address below*]    …………………………………………  …………………………………………  …………………………………………  ………………………………………… |  | ....................    [SIGNATURE OF OWNER]      ....................    [SIGNATURE OF WITNESS] |

|  |  |  |
| --- | --- | --- |
| Signed as a deed by [*insert name of Second Owner here*]    in the presence of [*insert name of witness here*]  of [*insert witness address below*]    …………………………………………  …………………………………………  …………………………………………  ………………………………………… |  | ....................    [SIGNATURE OF OWNER]      ....................    [SIGNATURE OF WITNESS] |

|  |  |  |
| --- | --- | --- |
| Executed as a deed by    [acting by ,a director and  , [a director OR its secretary] |  | ....................    [SIGNATURE OF FIRST DIRECTOR]    Director    ....................    [SIGNATURE OF SECOND DIRECTOR OR SECRETARY]    [Director OR Secretary] ] |

[

|  |  |  |
| --- | --- | --- |
| Signed and delivered as a deed for and on behalf of [*insert name of Mortgagee]*    acting by a duly authorised attorney in the presence of [*insert witness name*] |  | ....................    [SIGNATURE OF BANK ATTORNEY]      ....................    WITNESS’ SIGNATURE – BANK EMPLOYEE |

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