

DATED

2020

SQUARE FT PROPERTIES LTD

-to-

UTTLESFORD DISTRICT COUNCIL

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING

under section 106 of the Town and Country Planning Act 1990 (as amended) and section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000

relating to

Land at Elizabeth Way, Saffron Walden, Essex, CB10 2BL

Planning appeal reference: APP/C1570/W/19/3241526

Uttlesford District Council reference: UTT/19/0125/FUL

Memery Crystal LLP

165 Fleet Street

London

EC4A 2DY

Tel: 020 7242 5905

Reference: CSA/S1287.0002

THIS UNILATERAL UNDERTAKING is given this day of 2020

BY

- (1) **SQUARE FT PROPERTIES LTD** (company number **10928624**) whose registered office is at Charter House, 3a Felgate Mews, London, United Kingdom, W6 0LY (“the Owner”)

TO

- (2) **UTTLESFORD DISTRICT COUNCIL** of Council offices, London road, Saffron Walden, Essex, CB11 4ER (“the District Council”)

RECITALS

1. The District Council is the district planning authority for the purposes of the Act for the area in which the Land is situated by whom the obligations in this Deed are enforceable.
2. The Owner is the freehold owner of the Land registered at HM Land Registry as proprietors of the Land with freehold title under the Title Number EX376185.
3. The Owner submitted the Planning Application to the District Council and the District Council refused the Planning Application by way of written decision dated 11 September 2019.
4. An appeal to the Secretary of State has been lodged under reference number APP/C1570/W/19/3241526 which is to be determined by his Inspector following an inquiry.
5. The Owner is prepared to enter into this Deed in order to secure the planning obligations it creates for the purpose of regulating the Development and use of the Land in the event the Appeal is granted by the Inspector or the Secretary of State.

NOW THIS DEED WITNESSES AS FOLLOWS

1 DEFINITIONS

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

- 1.1. **“1990 Act”** means the Town & Country Planning Act 1990;

- 1.2. **“Appeal”** means the appeal to the Secretary of State following the refusal of the Planning Application by the District Council given appeal reference APP/C1570/W/19/3241526;
- 1.3. **“CIL Regulations”** means the Community Infrastructure Regulations 2010;
- 1.4. **“Decision Letter”** means the decision letter issued by the Inspector or the Secretary of State confirming whether or not the Appeal is allowed;
- 1.5. **“Development”** means the development authorised by the Permission;
- 1.6. **“Implementation”** means the implementation of the Permission by the carrying out of any material operation (as defined by s.56 of the 1990 Act) forming part of the Development begins to be carried out on the Land other than (for the purposes of this Deed and for no other purpose) the following operations:
- 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,
 - the temporary display of site notices or advertisements
- and the terms **“Implement”** and **“Implemented”** and all other cognate expressions shall be construed accordingly;
- 1.7. **“Inspector”** means the inspector appointed by the Secretary of State to preside over the planning inquiry in relation to the Appeal;
- 1.8. **“Interest”** means interest at 3 (three) per cent above the base

lending rate published by the Bank of England from time to time or if such rate shall not be published at any time such other comparable rate of interest as the Council may then in writing specify having regard to interest rates current at such time;

- 1.9. **“Land”** shall mean the land shown for identification purposes only edged in red on the Plan attached to this Deed;
- 1.10. **“Occupation”** means occupation of the building constructed as part of the development of the Land for the purposes permitted by the Permission and shall not include day time occupation by workmen involved in the construction or fitting out of the buildings, or occupation for marketing or occupation in relation to marketing or security operations or the use of finished buildings for use as temporary offices, or for the storage of plant and material and the terms **“Occupiers”** and **“Occupied”** and all other cognate expressions shall be construed accordingly;
- 1.11. **“Permission”** means the planning permission granted by the Secretary of State pursuant to the Appeal in respect of the Planning Application;
- 1.12. **“Plan”** means the plan annexed to this Deed with drawing number LP01 Rev A;
- 1.13. **“Planning Application”** means the application made by the Owner and the Developer under reference number UTT/19/0125/FUL for the development of the Land for the demolition of existing retail warehouse and redevelopment of the Land to provide a 68 bedroom care home (Use Class C2) together with associated car park, landscaping and amenity space;
- 1.14. **“Secretary of State”** means the Secretary of State for Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act;
- 1.15. **“Unit”** means an individual unit of accommodation to be constructed on the Land in accordance with the

Permission; and

- 1.16. **“Working Day”** means any day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London.

2 CONSTRUCTION OF THIS DEED

- 2.1 The headings in this Deed are intended for convenience only and shall not affect the construction or interpretation of this Deed.
- 2.2 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 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 interchangeable in that manner.
- 2.5 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.6 “Including” means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and “include” shall be construed accordingly.
- 2.7 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 2.8 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.
- 2.9 Reference to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District

Council the successors to their respective statutory functions and any duly appointed employee or agent of the District Council or such successor.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other such 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 1990 Act and are enforceable by the Council as local planning authority against the Owner but without prejudice to all and any other means of enforcing them at law or in equity or by statute and a planning obligation not to do any act or thing includes an obligation not to cause or permit or suffer that act or thing to be done by any other person.
- 3.3 No provision of this Deed shall be interpreted so as to affect contrary to law the rights powers duties and obligations of the District Council in the exercise of any of their statutory functions or otherwise.

4 CONDITIONALITY

This Deed is conditional upon the grant of the Permission on determination of the Appeal PROVIDED THAT the provisions of clauses 6; 8.1; and the Schedule shall be conditional upon Implementation.

5 CIL REGULATIONS

- 5.1 If in determining the Appeal the Secretary of State or the Inspector expressly states in the Decision Letter that any planning obligation contained in this Deed:
- 5.1.1 is not a material planning consideration; or
 - 5.1.2 can be given no weight in determining the Appeal; or
 - 5.1.3 does not constitute a reason for granting Permission in accordance with Regulation 122 of the CIL Regulations; or
 - 5.1.4 shall be limited in accordance with any limitation as to amount specified by the Inspector or the Secretary of State as appropriate; or

5.1.5 where the Inspector or Secretary of State specifies that any or all of the obligations is not or are not required

then subject always to Clause 12.6 of this Deed such planning obligation shall, as the case may be, be treated as amended in accordance with the Secretary of State's or the Inspector's decision or shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the Decision Letter.

6 OBLIGATIONS OF THE OWNER

With the intent that the Land shall be subject to the obligations and restrictions contained in this Deed for the purpose of restricting or regulating the Development and use of the Land so that the provisions of this Deed shall be enforceable against the Owner, the Owner undertakes to the District Council to comply with the obligations set out in the Schedule.

7 SERVICE OF NOTICES

Any notices to be served or document to be submitted by or to any party to this Deed shall be in writing and shall be validly served if personally delivered or if sent by post (including recorded delivery) to that party at the address specified as theirs in this Deed party or such other address as shall from time to time be notified by a party to this Deed as an address at which service of notices shall be accepted or (in the case of a limited company) at its registered office and in the case of the District Council addressed to the Assistant Director Planning and Building Control.

8 NOTICE OF IMPLEMENTATION

8.1 The Owner will give the District Council not less than 10 Working Days' notice of intention to Implement the Permission specifying the intended Implementation Date.

8.2 The Owner will give the District Council notice of Implementation within 10 Working Days' of the Implementation Date.

9 NOTICE OF CHANGE OF OWNERSHIP

The Owner undertakes to give the District Council written notice as soon as reasonably practicable and in any event within 15 Working Days of any change in ownership of any of its interests in the Land occurring before all of the obligations under this Deed have been fully discharged, such notice to give details of the

transferee's full name and registered office (if a company or usual address if not) together with details of the interest acquired and the area of Land acquired by reference to a plan PROVIDED THAT this undertaking shall not be applicable to the disposal of the freehold interest in a Unit or the grant of a leasehold interest in a Unit or any disposition to a statutory undertaker or person who acquires any part of the Land or any interest in it for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

10 CESSATION OF LIABILITY

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 Land or any relevant part thereof (in which event the obligations of the Owner under this Deed shall cease only in relation to that part or those parts of the Land which is or are transferred by it) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

11 PAYMENT OF COSTS

The Owner will reimburse the District Council in respect of all administrative costs reasonably and properly incurred in connection with the cost of monitoring and administration of this Deed.

12 MISCELLANEOUS

- 12.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to Implementation PROVIDED ALWAYS that the Permission has not been Implemented.
- 12.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission other than the Permission granted (whether or not on appeal) after the date of this Deed.
- 12.3 This Deed shall not be enforceable against the Occupier of a Unit or their successors in title chargees mortgagees or receivers nor against any statutory undertaker/utility provider which acquires any part of the Land or an interest in it for the purposes of its statutory function PROVIDED ALWAYS THAT this clause shall not apply to any restriction limiting Occupation of all of part of the Development to a certain category of occupant.

- 12.4 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or any other powers vested in the Council under any statute byelaw statutory instruments orders and regulations (already or in the future to be passed) or any government department public or competent Council or Court of competent jurisdiction.
- 12.5 The Owner warrants to the Council that as at the date of this Deed there are no other persons with any interest (legal or equitable) in the Land or any part of it.
- 12.6 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.
- 12.7 This Deed may be registered as a local land charge by the District Council.

13 WAIVER

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

14 NO FETTER

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the District Council in the exercise of their respective functions in any capacity.

15 DISPUTE RESOLUTION

- 15.1 Any dispute arising out of the provisions of this Deed shall be referred to a person be referred to an independent and suitable person holding appropriate professional qualifications (the "Expert") to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to this Deed to the Courts and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any party to the Courts for the resolution of any matter arising from this Deed.

- 15.2 The decision of the Expert shall be final and binding upon the parties and the following provisions shall apply:
- 15.2.1 the charges and expenses of the Expert shall be borne equally between the parties unless the Expert shall otherwise direct;
 - 15.2.2 the Expert shall give the parties an opportunity to make representations and counter-representations before making their decision;
 - 15.2.3 the Expert shall be entitled to obtain opinions from others if they so wish;
 - 15.2.4 the Expert shall make their decision within the range of any representations made by the parties themselves; and
 - 15.2.5 the Expert shall comply with any time limit or other directions agreed by the parties on or before their appointment.

16 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.

17 VAT

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

18 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing in this Deed shall confer on any third party any benefit of or any right to enforce any term of this Deed.

19 JURISDICTION

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

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.

SCHEDULE

COVENANTS GIVEN TO THE DISTRICT COUNCIL

Definitions

1. In this Schedule, in addition to the definitions in clause 1 of this Deed, the following words and expressions have the following meanings:
 - 1.1. “Healthcare Contribution” means the sum of thirteen thousand nine hundred and eighty pounds (£13,980) Index Linked together with any Interest which has fallen due in accordance with the provisions of this Deed;
 - 1.2. “Healthcare Contribution Purposes” means the use of the Healthcare Contribution towards capital projects to improve by way of refurbishment, reconfiguration, extension or relocation of the healthcare facilities in order to provide improvements to capacity arising as a result of the Development at The Gold Street Surgery (including its branch surgery);
 - 1.3. “Index” means the Building Cost Information Service (“BCIS”) Public Sector price and cost index, as published by the BCIS on behalf of the Department of Business, Innovation and Skills or in the event of the said Index being discontinued the nearest equivalent Index;
 - 1.4. “Index Linked” means increased by an amount equivalent to the increase in the Index in accordance with paragraph 2 of this Schedule; and
 - 1.5. “NHS England” means the national commissioning authority for health services in England (or its successor body from time to time).

2. The Owner undertakes to pay the Contribution to the District Council on or before Implementation of the Development to be used towards the Healthcare Contribution Purposes.

3. The Contribution shall be increased by an amount equivalent to the increase in the Index in accordance with the following formula:

$$\frac{A}{B}$$

where:

A = the Index figure published for the calendar month preceding the date the relevant payment is made; and

B = the Index figure for the calendar month preceding the date of this Deed.

4. The Owner undertakes not to cause or permit Occupation of the Development prior to depositing the Healthcare Contribution with the District Council.

EXECUTED as a **DEED** by

SQUARE FT PROPERTIES LTD

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acting by a Director

Director signature

.....

Director name in block capitals

in the presence of a witness:

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Witness signature

Witness name:

.....

Witness occupation:

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Witness address:

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