DATED

28th November, 2018

PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990

RELATING TO LAND AT GABLES HOTEL, 28 CRESCENT RD, BOGNOR REGIS, WEST SUSSEX, PO21 1QS

Parties:

OWNER THE GABLES HOTEL BOGNOR REGIS LIMITED
39 SACKVILLE ROAD, HOVE, BN3 3WD

and

SVENSKA HANDELSBANKEN AB (PUBL)
5TH FLOOR, 2 BARTHOLOMEWS, BRIGHTON. EAST SUSSEX. BN1 1HG

ARUN DISTRICT COUNCIL BR/273/18/PL

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THIS DEED is dated 28th November 2018

(1) The Gables Hotel Bognor Regis Limited incorporated and registered in England and Wales with company 10173854 whose registered office is at 39, Sackville Road, Hove BN3 3WD **Owner**

(2) Svenska Handelsbanken AB (publ) registered in England and Wales with company number BR000589 and whose address for service is situate at 5th floor 2 Bartholomews Brighton East Sussex BN1 1HG **(Mortgagee)**

IN FAVOUR OF Arun District Council of The Civic Centre Maltravers Road Littlehampton BN17 5LF **Council**

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 owns the Property subject to a mortgage in favour of the Mortgagee.

(C) The Owner has made the Planning Application and is proposing to carry out the Development.

(D) The Mortgagee is the registered proprietor of the charge dated 1st July 2016 referred to in entry number 4 of the charges register of Title number WSX21096 and has agreed to enter into this deed to give its consent to the terms of the unilateral undertaking.

(E) In consideration of Pagham Harbour policy ENV DM2 of the emerging Local Plan 2011-2031, and Cabinet's approval of the tariff based system on 20 July 2015, the Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Access Management Contribution: the sum of £3,484.00 towards the cost of delivering measures to avoid, or mitigate to an acceptable level, the harm caused to Pagham Harbour by the Development.

Base Rate: the higher of 5% and the base rate from time to time of Barclays Bank plc.

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: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

Commenced and **Commences** shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property by Change of use from Hotel (C1 Hotels) to 4 No. Flats (C3 Dwelling House) including enlarged Dormer and additional door on SE Elevation as described in the Planning Application.

Pagham Harbour: A Special Protection Area, also known as a Natura 2000 site, based in Pagham, West Sussex in the District of Arun, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds.

Plan: the plan attached to this deed.

Planning Application: an application for planning permission registered by the Council under reference number BR/273/18/PL.

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

Property: the freehold land at 28 Crescent Rd, Bognor Regis shown edged red on the Plan and registered at HM Land Registry with absolute title under title number(s) WSX 21096.

TCPA 1990: Town and Country Planning Act 1990

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England **OR** Wales.

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.

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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 **writing** or **written** excludes faxes and e-mail.

1.11 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.

1.12 References to clauses are to the clauses of this deed.

1.13 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.

1.14 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 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.

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2.4 The obligations contained in clause 3 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 to pay the Access Management Contribution to the Council on or before the Commencement Date.

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:

(a) expires before the Commencement of Development;

(b) is varied or revoked other than at the request of the Owner; or

(c) 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. INTEREST ON LATE PAYMENT

If the Access Management Contribution has not been paid to the Council prior to or on the Commencement Date, the Owner shall pay the Council interest on the Access Management Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the date of payment.

8. COUNCIL'S COSTS

The Owner shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

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9. OWNERSHIP

9.1 The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Property.

9.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 14 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:

(a) the name and address of the person to whom the disposition was made; and

(b) the nature and extent of the interest disposed of.

10. NOTICES

10.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

(a) delivered by hand; or

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

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

(a) to The Planning Department of Arun District Council, quoting the Planning Application number at the following address: The Civic Centre Maltravers Road Littlehampton BN17 5LF;

(b) for the attention of the Owner Dave Willis, Director at: Lincoln Estates Ltd, PO Box 2525, Henfield, BN5 9LQ;

(c) to the Mortgagee at: Handelsbanken 5th Floor, 2 Bartholomews, Brighton. East Sussex. BN1 1HG marked for the attention of Richard Carnochan, Account Manager.

10.3 Any notice or other communication given in accordance with clause 10.1 and clause 10.2 will be deemed to have been received:

(a) 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;

(b) 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.

10.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

10.5 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.

11. 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.

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.

13. MORTGAGEE'S CONSENT

13.1 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.

13.2 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.

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This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

1. Executed as a deed by The Gables Hotel Bognor Regis Limited acting by David Willis, a director and James Dodson, a director	[redacted] ..... SIGNATURE OF FIRST DIRECTOR Director [redacted] SIGNATURE OF SECOND DIRECTOR OR SECRETARY Director
2. Executed as a deed by **SVENSKA HANDELSBANKEN AB (PUBL)** a company incorporated in Sweden, acting by Simon Nicholson, Branch Manager and Richard Carnochan, Account Manager who, in accordance with the laws of that territory, are acting under the authority of the company	Signature in the name of the company **SVENSKA HANDELSBANKEN AB (PUBL)** [redacted] Authorised Signatory [redacted] Authorised Signatory

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