

DATED

24th April 2024



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

**RELATING TO LAND AT 86 ALDWICK ROAD, BOGNOR
REGIS**

Parties:

**CRE8 PROPERTY LTD OF HUNSTEAD HOUSE, NICKLE FARM, CHARTHAM, CANTERBURY, CT4 7PE
(OWNER)**

And

**HSBC UK BANK PLC (Co. Regn. No. 9928412) of
Customer Service Centre, BX8 5HB (Mortgagee)**

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THIS DEED is dated

24th April

2024

- (1) **CRE8 PROPERTY LTD** is incorporated and registered in England and Wales with Company Number 10530895 whose registered office is at Hunstead House, Nickle Farm, Chartham, Canterbury, CT4 7PE (the "**Owner**")
- (2) **HSBC UK BANK PLC** incorporated and registered in England and Wales with company number 9928412 whose registered office is at of Customer Service Centre, BX8 5HB (the "**Mortgagee**")

IN FAVOUR OF Arun District Council of The Civic Centre Maltravers Road Littlehampton BN17 5LF (the "**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 is the registered proprietor with Title Absolute of the land registered at HM Land Registry under Title Number WSX176010 known as land at 86 Aldwick Road, Bognor Regis, PO21 2PE which is 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 14th November 2019 referred to in entry number four (4) of the charges register of Title number WSX176010 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 Local Plan 2011-2031, and Cabinet's approval of the tariff-based system on 20 July 2015 and a reduction in the tariff on 10 April 2017, 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 £9,380 (nine thousand, three hundred and eighty pounds and zero pence) 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

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 Continued use of former Care Home (C2) as temporary accommodation for seasonal agricultural workers (resubmission following BR/213/20/PL) 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/97/22/PL.

Planning Permission: means a Planning Permission for the Development pursuant to the Planning Application.

Property: the freehold land at Former Royal Bay Care Home 86 Aldwick Road Bognor Regis PO21 2PE shown edged red on the Plan and registered at HM Land Registry with absolute title under title number WSX176010

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.

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 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, Localism Act 2011 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.
- 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

3.1. The Owner covenants with the Council to pay the Access Management Contribution to the Council on or before the Commencement Date.

4. RELEASE

4.1. 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

5.1. 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

6.1. This deed is a local land charge and shall be registered as such by the Council.

7. INTEREST ON LATE PAYMENT

7.1. 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

8.1. 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.

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: Patricia Mary Cox (Director) at: Hunstead House,, Nickle Farm, Canterbury, Kent, England, CT4 7PE
 - (c)** to the Mortgagee at: [ADDRESS] marked for the attention of [NAME/POSITION].]
- 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

11.1. 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

12.1. 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 hereby consents to the Owner entering into this Deed but shall not be liable for any breach of the obligations contained within nor for any costs incurred by the Council as a result of such breach unless the Mortgagee has caused such breach while in possession and irrespective of whether or not the Mortgagee shall have caused such breach it shall have no liability after the Mortgagee has discharged the charge dated 14th November 2019 or has disposed of the Owner's interest in the Property whether by sale or otherwise.

14. EXECUTION IN COUNTERPARTS

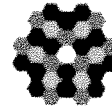
14.1. This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original but all the counterparts together shall constitute one agreement.

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

2. Executed as a deed by CRE8 PROPERTY LIMITED acting by PATRICIA MARY COX a director and MATTHEW JARRETT, a director	SIGNATURE OF PATRICIA MARY COX Director SIGNATURE OF MATTHEW JARRETT Director
3. Executed as a deed by As Attorney of HSBC UK BANK PLC	 NAME, OCCUPATION and SIGNATURE of Attorney in the presence of: Signature of Witness Print full name Address

SCHEDULE 1 | OFFICIAL COPY

HM Land Registry



Official copy of register of title

Title number WSX176010 Edition date 15.02.2022

- This official copy shows the entries on the register of title on 08 MAR 2024 at 11:33:07.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 08 Mar 2024.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Durham Office.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : ARUN

- 1 (17.12.1992) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 86 Aldwick Road, Bognor Regis (PO21 2PE).
- 2 (14.11.2019) A Transfer of the land in this title dated 5 November 2019 made between (1) Royal Bay Care Homes Ltd and (2) Cre8 Property Ltd contains a provision relating to the creation and/or passing of easements.

NOTE: Copy filed.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (14.11.2019) PROPRIETOR: CRE8 PROPERTY LTD (Co. Regn. No. 10530895) of Hunstead House, Nickle Farm, Chartham, Canterbury CT4 7PR.
- 2 (14.11.2019) The price stated to have been paid on 5 November 2019 was £1,100,000.
- 3 (14.11.2019) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 5 November 2019 in favour of HSBC UK Bank PLC referred to in the Charges Register.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (17.12.1992) A Conveyance of the land in this title and other land dated 5 December 1940 made between (1) Amy Violet Needham and Arthur

1 of 2

Title number WSX176010

C: Charges Register continued

- Hugh Harford and (2) National Provincial Bank Limited contains or refers to restrictive covenants but the document having been lost no particulars of such covenants could be obtained on first registration.
- 2 (17.12.1992) A Conveyance of the land in this title and other land dated 29 July 1976 made between (1) Watney Mann (London & Home Counties) Limited (Vendor) (2) Chef & Brewer Limited (Chef & Brewer) (3) Mecca Limited (Purchaser) and (4) Grimston Estates Limited (Sub-Purchaser) contains covenants details of which are set out in the schedule of restrictive covenants hereto.
- 3 (14.11.2019) REGISTERED CHARGE dated 5 November 2019.
- 4 (14.11.2019) Proprietor: HSBC UK BANK PLC (Co. Regn. No. 9928412) of Customer Service Centre, SX8 5HB.

Schedule of restrictive covenants

- 1 The following are details of the covenants contained in the Conveyance dated 29 July 1976 referred to in the Charges Register:-
- THE Sub-Purchaser for itself and its successors in title and assigns HEREBY COVENANTS with Chef & Brewer and the Vendor and as a separate covenant with each and their respective successors in title and assigns so as to bind the land hereby conveyed and each and every part or parts thereof into whomever hands the same may come and so that this covenant shall be and enure for the benefit and protection of the adjoining and neighbouring lands retained by the Vendor and the neighbouring and licensed properties of Chef & Brewer and the Vendor and of Grand Metropolitan Limited and all subsidiary and associated companies within Grand Metropolitan Group and in particular the "Victor" Public House Aldwick Road the "Barclays Arms" Public House West Street and the "Crown" Public House Manor Place all in Bognor Regis aforesaid and all and every part or parts thereof not to use the land hereby conveyed or any part or parts thereof or any buildings erected or to be erected thereon for the trade or business of a wholesale and/or retail seller of beers wines spirits or other intoxicating liquors and not to permit the said land or any parts thereof or any buildings erected or to be erected thereon to be used as a club or as a place where in either case intoxicating liquors shall be sold supplied or consumed or for the purpose of brewing manufacturing distilling processing making preparing bottling or storing intoxicating liquors or for any other purposes whatsoever in connection with intoxicating liquors or for the display of advertisements of beers wines spirits or other intoxicating liquors other than of advertisements of those beers brewed by or other intoxicating liquors produced or marketed by the Vendor its ultimate Parent Company Grand Metropolitan Limited or any other subsidiary Company of Grand Metropolitan Limited as defined by Section 148 of the Companies Act 1948 or of those wines spirits or other intoxicating liquors which shall be first approved by Chef & Brewer in writing.

End of register

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SCHEDULE 2 | TITLE PLAN

H.M. LAND REGISTRY		TITLE NUMBER	
		WSX176010	
ORDNANCE SURVEY PLAN REFERENCE	SZ 9298	SECTION F	Scale 1:1250
COUNTY WEST SUSSEX	DISTRICT ARUN	© Crown copyright 1980	



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