We certify this to be a true and complete copy of the original

FREETHS LLP
Freeths LLP
Solicitors
Date 27/04/2021

**DATED** 21 April **2021**

**LNT CARE DEVELOPMENTS (3) LIMITED**

**and**

**ASHLEY KING (DEVELOPMENTS) LIMITED**

**TO**

**SOUTH HOLLAND DISTRICT COUNCIL**

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# UNILATERAL UNDERTAKING GIVEN UNDER

**Section 106 Town And Country Planning Act 1990 (as amended)**

**relating to property at Holbeach Meadows, PE12 7HZ**

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This agreement is signed in Counterpart

**DATE** 21 April **2021**

**PARTIES**

(1) **ASHLEY KING (DEVELOPMENTS) LIMITED** (Company number 04242280) who registered office is at 1 Goodison Road, Lincs Gateway Business Park, Spalding, Lincolnshire, PE12 6FY (the "**Owner**")

(2) **LNT CARE DEVELOPMENTS (3) LIMITED** (Company number 11854279) of Helios 47 Isabella Road, Garforth, Leeds, West Yorkshire, LS25 2DY (the "**Developer**")

To

(3) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, Lincolnshire, PE11 2XE (the "**Council**")

**DEFINITIONS**

1.1 In this Deed the following words and phrases have the following meanings respectively:

| | |
|---|---|
| "the Act" | means the Town and Country Planning Act 1990 (as amended) |
| "the Development" | means the erection of a ~~three storey~~ 66 bed two storey care home for the elderly with access, car parking and associated works as set out in the Planning Application |
| "50% Occupation" | means the first occurrence of the simultanous occupation of 33 or more bedrooms in the Development by residents (being older persons) for the purposes permitted by the Permission and 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 '50% Occupied' shall be construed accordingly |
| "Health Infrastructure Sum" | means the sum of £25,954.50 to be paid in respect of the impact of the Development on the local health infrastructure by contribution to a new purpose built health centre/primary care centre or extension to existing facilties in Holbeach |
| "Index" | means the All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if such index no longer exists such other index as is agreed between the parties |
| "Interest" | means interest at 4% above the base lending rate of Lloyds Bank plc from time to time |
| "the Permission" | means the planning permission that may be granted for the Development in pursuance of the Planning Application |
| "the Planning Application" | means the application for planning permission accepted on 22 December 2020 to carry out the Development on the Site and allocated the Council's reference H09-1172-20 |
| "the Site" | means the freehold property shown edged red on the attached plan known as land at Holbeach Meadows, PE12 7HZ being part of the land registered at |

| | |
|---|---|
| | the Land Registry with title absolute with title number LL171271 |

**INTERPRETATION**

1.2 Unless the context otherwise requires in this Deed:

1.2.1 The expressions "the Owner", "the Developer", and "the Council" shall include their respective successors in title (whether statutory or otherwise) their assigns and those deriving title from, through or under them and in the case of the Council shall include successors to its functions

1.2.2 Words importing gender shall include the masculine, feminine and neuter genders

1.2.3 Words importing persons shall include firms, companies and corporations and vice versa

1.2.4 Words importing the singular number shall include the plural and vice versa

1.2.5 Undertakings given by a party that consists of more than one person shall be joint and several as shall any undertakings given by more than one party

1.2.6 Any reference to an Act of Parliament or section of an Act of Parliament shall include any statutory modification extension or re-enactment of that Act or section for the time being in force and all instruments orders notices regulations directions byelaws permissions and plans for the time being made issued or given under that Act or deriving validly from it

1.2.7 "including" means "including, without limitation"

1.2.8 Reference to "the Site" include any parts thereof

1.3 The clause headings herein do not form part of this Deed and shall have no effect upon the meaning or construction of the provisions of this Deed

1.4 If any provision of this Deed is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed is to be unaffected

## 2. RECITALS

2.1 The Council is the local planning authority for the purposes of the Act in respect of the area which includes the Site

2.2 The Owner is the freehold owner of the Site and the Developer has an interest in the Site by virue of a conditional contract for sale / purchase

2.3 The Owner and the Developer enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Owner and the Developer and their respective successors in title to the Site

## 3. STATUTORY PROVISIONS

3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act and all other enabling powers and shall constitute and shall be deemed to contain planning obligations for the purposes of Section 106 of the Act and is entered into by the Owner and the Developer with the intent that such planning obligations be binding upon their interests in the Site and enforceable as planning obligations by the Council as local planning authority against their successors in title and in the event of a breach of undertaking it shall be enforceable by the Council against the Owner of the Site and subject to clause 4.2 against the Developer and against their successors in title

3.2 To the extent that any of the undertakings restrictions or requirements contained in this Deed are not planning obligations within the terms of Section 106 of the Act they are entered into pursuant to Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers

3.3 Save as provided in Clause 3.1 above, the parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("the 1999 Act") by any person who is not a party to it PROVIDED for the avoidance of doubt it is agreed that the exclusion of the 1999 Act shall not prevent any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any obligation in this Deed

3.4 This Deed shall be registered as a local land charge by the Council

4. **THE OWNER'S UNDERTAKING AND THE DEVELOPER'S CONSENT**

4.1 The Owner and the Developer undertake to the Council so as to bind the Site to perform fully and to observe the undertakings set out in the First Schedule to this Deed

4.2 The Developer acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed PROVIDED THAT the Developer shall otherwise have no liability under this Deed unless it becomes the registered proprietor of the freehold or leasehold interest in the Site or any part of it or undertakes any part of the Development of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

4.3 The Owner and the Developer undertake to the Council to pay Interest (if any) on the Health Infrastructure Sum from the date payment is due to the date the payment (if late) and to apply indexation to the Health Infrastructure Sum by increasing the amount paid by an amount equivalent to the increase in the Index (if any) from the date hereof until the date that the sum is paid.

4.4 The Owner undertakes to give the Council written notice as soon as reasonably practicable following any change in ownership of the Site which occurs before all the obligations under this Deed have been discharged

5. **SECTION 73 APPLICATIONS**

5.1 It is agreed between the parties that were planning permission is issued in relation to the Development pursuant to an application under section 73 of the 1990 Act this Deed shall continue to bind the Development and shall be in full force and effect subject to and in accordance with the provisions contained herein **AND PROVIDED THAT** in the event that upon receipt of an application under section 73 of the 1990 Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council should retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.

6. **NOTIFICATIONS**

The Owner and the Developer undertake to the Council:

6.1 to notify the Council in writing 10 working days before the date it is anticipated any building comprised in the Development will be First Occupied; and

6.2 to notify the Council in writing within 10 Working Days of the date any building comprised in the Development is 50% Occupied and to specify in the notification the date on which such 50% Occupation occurred.

## 7. LIABILITY FOR BREACH OF UNDERTAKING

7.1 Without prejudice to the liability for any subsisting breach of undertaking no person shall be liable for any breach of undertaking occurring after they have ceased to have any interest in the Site (or that part of the Site in respect of which the breach occurred)

7.2 The obligations on the part of the Owner and the Developer contained in this Deed shall not be enforceable against service companies or statutory undertakers who purchase (including by way of lease) or otherwise become proprietor of any land or obtain the benefit of any right wayleave covenant or easement in on over under and across the Site for the construction or installation of any structure or other apparatus (including without prejudice to the generality of the foregoing electricity substations poles stays gas governor stations or pumping stations) required to provide services or facilities in connection with the development of the Site

## 8. NOTICES

Any notice, demand or any other communication served by any party under this Deed is to be delivered by hand or sent by first class post, pre-paid or recorded delivery to the principal address or registered office (as appropriate) of the relevant party or such other address as may be notified by one party to the other from time to time.

## 9. DECLARATIONS

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 Permission) granted by the Council after the date of this Deed

10. **TERMINATION OF THIS DEED**

This Deed will come to an end if the Permission is not granted or it is quashed, revoked, otherwise withdrawn, or expires prior to being implemented, or modified by any statutory procedure

11. **NO FETTER**

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

12. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws of England and the parties hereto submit to the exclusive jurisdiction of the courts of England.

13. **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 have executed this Deed the day and year first before written

14. COUNTERPART

This deed maybe executed in any number of Counterparts, each of which when executed shall constitute a duplicated original, but all the counterparts shall together constitute the one agreement

Freeths LLP

## SCHEDULE ONE – HEALTH INFRASTRUCTURE SUM

The Owner and the Developer undertake jointly and severally with the Council with the intent that this is a planning obligation for the purposes of Section 106 of the Act to pay to the Council the Health Infrastructure Sum prior to 50% Occupation and not to cause or permit 50% Occupation until the Health Infrastructure Sum has been paid in full to the Council

**EXECUTED AS A DEED by**
**ASHLEY KING (DEVELOPMENTS) LIMITED**

**in the presence of:-**

**Witness Signature**.....

**Witness Name**.....Robyn Kendall.....

**Witness Address**.....131 Willow Carr
Cawbt
Spalding
PE12 6GF

**EXECUTED AS A DEED by**
**LNT CARE DEVELOPMENTS (3) LIMITED**

**in the presence of:-**

Witness Signature.....

Witness Name.....

Witness Address.....

We certify this to be a true and complete copy of the original

FREETHS LLP
Freeths LLP
Solicitors
Date 27/04/2021

DATED 21 April 2021

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Wrekin LLP

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Freeth LLP

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**EXECUTED AS A DEED by**
**ASHLEY KING (DEVELOPMENTS) LIMITED**

**in the presence of:-**

**Witness Signature**.....

**Witness Name**.....

**Witness Address**.....

**EXECUTED AS A DEED by**
**LNT CARE DEVELOPMENTS (3) LIMITED**

**in the presence of:-**

Witness Signature..... J. S. .....

Witness Name..... JULIA SANCHEZ .....

Witness Address..... Helios 47
Garforth
Leeds
LS25 2JY