

Dated

3 August

2022

Given By

(1) AS&S PROPERTY INVESTMENTS LIMITED

TO

(2) SOUTH HOLLAND DISTRICT COUNCIL

PLANNING OBLIGATION BY DEED
Section 106 of the Town and Country Planning Act 1990

Relating to land at
11 Market Place, Spalding

Date

3 August

2022

BY

- (1) **AS&S PROPERTY INVESTMENTS LIMITED** of 6 Blenheim Court, Peppercorn Close, Peterborough, Cambridgeshire PE1 2DU ("the Owner");

TO

- (2) **SOUTH HOLLAND DISTRICT COUNCIL** of Priory Rd, Spalding PE11 2XE ("the Council");

INTRODUCTION

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the Land registered under title number LL286171 subject to a charge in favour of HSBC Bank PLC dated 23 July 2021
- (C) The Owner has applied to the Council for planning permission for the Land under reference H16-1319-21 for residential development for 12 Dwellings.
- (D) The Owner has entered into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:**1. DEFINITIONS**

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

"Act"	means the Town and Country Planning Act 1990 as amended
"Application"	means the application for Planning Permission for the Development and allocated reference number H16-1319-21
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of

	the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of: • access, • site clearance, • demolition work, • archaeological investigations, • investigations for the purpose of assessing ground conditions, • remedial work in respect of any contamination or other adverse conditions, • the laying or diversion of services, • the erection of hoardings or other temporary means of enclosure, and • the temporary display of site notices or advertisements
"Commencement Notice"	means written notice to the Council of the intended date of Commencement of Development
"Development"	means the development of the Land comprising alterations and conversion from Class E to mixed use Class E/Class C (12 residential units), pursuant to the Planning Permission
"Dwelling"	means any unit of residential accommodation constructed pursuant to the Planning Permission
"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
"Indexation"	means indexed as set out in Clause 10 of this Deed
"Interest"	means interest at the base rate of Lloyds Bank PLC plus 4%
"Land"	means the land as described in Schedule 1 against which this Deed may be enforced as shown edged red on the Plan (excluding any land which is public highway)
"Monitoring Fee"	means the monitoring fee of One Thousand Five Hundred Pounds (£1,500) payable to the Council for the monitoring and administration of the obligations in this Deed
NHS Contribution	means the sum of Seven Thousand Nine Hundred and Twenty Pounds (£7,920) payable to the Council for the expansion in capacity through remodelling/changes to layout or extension to existing facilities within the Market Deeping and Spalding Primary Care Network at Beechfield Medical Centre Munro Medical Centre and The Spalding GP Surgery
"Plan"	means the plan attached to this Deed labelled as drawing number 816-001 being the Site Location Plan submitted with the Application
"Planning Permission"	means the planning permission granted to by the Council for the Development pursuant to the Application which is subject to this Deed or such other planning



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S.S.



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Scale Bar

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Contractors must work only to figured dimensions which are to be checked on site, any discrepancies are to be reported to the architect before proceeding.

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Rev.	Date	Details
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Planning

Drawing Name
Site Location Plan

Project Name
11 Market Place,
Spalding

Project No.
816

Dwg No.
001

Rev.
-

Scale
1:1250 @ A4

Drawn
NA

Date
08.10.2021

	permissions for the Development granted pursuant to section 73 or 96A of the Act
"Working Days"	means any day other than a Saturday Sunday or public or bank holiday in England

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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 interchangeably
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 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.
- 2.6 References 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 to the Land or any part thereof and in the case of the Council, successors to its functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act with the intent that the covenants and obligations shall run with the Land.
- 3.2 The covenants, restrictions and obligations under this Deed are planning obligations pursuant to Section 106 of the Act and may be enforced by the Council.

4. CONDITIONALITY

- 4.1 This Deed and the obligations contained herein is conditional upon the grant of Planning Permission **SAVE IN** in respect of any obligations contained in this Deed that expressly requires compliance prior to the Commencement of Development, which shall come into effect immediately upon the grant of the Planning Permission

5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out herein

6. NOTICES AND RECORD KEEPING

- 6.1 Any notices required to be served pursuant to this Deed shall be deemed to have been properly served if delivered by hand or sent by recorded or special delivery to the principal address or registered office (as appropriate) of the relevant party or other such other address as may be notified by one party to other from time to time.
- 6.2 The Owner shall serve the Commencement Notice upon the Council at least ten (10) Working Days prior to the Commencement of the Development.

7 MISCELLANEOUS

- 7.1 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers and duties of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of the functions as a local authority.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 The Owner consents to this Deed being registered as a local land charge by the Council.
- 7.4 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.

- 7.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or part of the Land but without prejudice to liability for any subsisting breach arising in relation to that part prior to parting with such interest.
- 7.7 This Deed shall not be enforceable against:
- 7.7.1 owners occupiers or tenants of Dwellings nor against those deriving title from them;
 - 7.7.2 any party solely as a result of such party possessing an interest in the Land relating to subsoil of land which has been adopted by the Council or any other relevant public body as maintainable at public expense;
 - 7.7.3 statutory undertakers acquiring an interest in the Land for the purposes of their undertaking;
 - 7.7.4 mortgagee or chargee unless that mortgagee or chargee comes into possession of the whole or any part of the Land
 - 7.7.5 buyers or occupants of Dwellings erected on the Land pursuant to the Planning Permission or mortgagee of such person
- 7.8 Representatives of the Council may enter upon the Land at any reasonable time upon reasonable prior written notice to ascertain whether the terms of this Deed are being or have been complied with.
- 7.9 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 Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.10 The payment of the financial contributions set out in this Deed are subject to the proviso that if all or any payments of those contributions made to the Council pursuant to the provisions of this Deed are not used or not committed to use in whole or in part for the purpose for which they were paid as specified in this Deed then such payments or part thereof insofar as they have not been used or committed to use for their designated purpose within ten (10) years from the date of receipt by the Councils (upon receipt

of a written request from the person who made the payment) shall be returned to the party who made the payment

8. WAIVER

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

9. CHANGE OF OWNERSHIP

- 9.1 The Owner shall give the Council at least 10 Working Days written notice of any change in the ownership of any of its interest in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferees name and address together with details of the part of the Land disposed of **PROVIDED THAT** this shall not apply in relation to the sale or lease of a single Dwelling or a disposal to a statutory undertaker

10. INDEXATION

- 10.1 The NHS Contribution shall be linked to the Index to the intent that the actual amounts to be paid shall be the amount as set out in Schedule divided by the Index figure last published prior to the date of this Deed multiplied by the Index figure last published before the due date for payment and "Indexation" shall be construed accordingly.

11. INTEREST

- 11.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the actual date of payment.

12. VAT

- 12.1 Any consideration given under this Deed shall be done in such a way that the VAT liability is borne by the Owner and not the Council.

13. SECTION 73 APPLICATIONS

- 13.1 It is agreed between the parties that where planning permission is issued in relation to the Development pursuant to an application under section 73 of the 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 a relevant application under section 73 of the Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council 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 obligation.

14. JURISDICTION

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

15. EXECUTION AND DELIVERY

- 15.1 This Deed is executed as a deed by the parties and is delivered on the date first hereinbefore written

IN WITNESS whereof the parties hereto have executed this Deed on the day and year

SCHEDULE 1

DETAILS OF THE OWNER'S TITLE, AND DESCRIPTION OF THE LAND

The Land is known as 11 Market Place, Spalding and falling within Title Number LL286171 and shown edged red, for identification purposes only, on the Plan.

SCHEDULE 2
(THE OWNER'S COVENANTS)

The Owner covenants to the Council as follows:

1. NHS CONTRIBUTION

- 1.1 To pay the NHS Contribution immediately upon the Planning Permission being issued

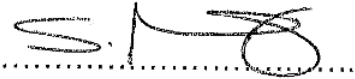
2. MONITORING FEE

- 2.1 To pay the Monitoring Fee immediately upon the Planning Permission being issued

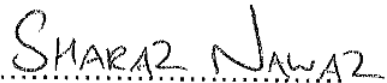
EXECUTED as a **DEED** by

AS&S PROPERTY INVESTMENTS LIMITED

acting by one Director



Director's Signature



Director's Name

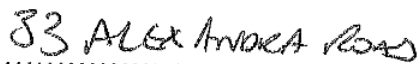
In the presence of



Witness Signature



Witness Name





Witness Address



Witness Occupation