

**DATED**

**2021**

**HARTMIRES INVESTMENTS LIMITED (1)**

**AND**

**OMNI PROPERTY FINANCE LIMITED (2)**

**TO**

**MID SUSSEX DISTRICT COUNCIL (3)**

**AND**

**WEST SUSSEX COUNTY COUNCIL (4)**

**PLANNING OBLIGATION  
BY WAY OF DEED OF UNILATERAL UNDERTAKING**

pursuant to Section 106 of the  
Town and Country Planning Act 1990 (as amended)  
relating to land North of Turners Hill Road,  
Turners Hill,  
West Sussex

**THIS DEED** is dated the

day of

2021

## **BETWEEN**

- (1) **HARTMIRES INVESTMENTS LIMITED** incorporated and registered in England and Wales with company number 07844320 whose registered office is at Mclarens, Penhurst House, 352-356 Battersea Park Road, London SW11 3BY (**the Owner**)
- (2) **OMNI PROPERTY FINANCE LIMITED** incorporated and registered in England and Wales with company number 12085679 whose registered office is at 4th Floor, 15 Golden Square, London W1F 9JG (**the Mortgagee**)

## **TO**

- (3) **MID SUSSEX DISTRICT COUNCIL** of Oaklands, Oaklands Road, Haywards Heath, West Sussex, RH16 1SS (the District Council); and
- (4) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (the County Council)

## **BACKGROUND**

- (A) The Owner is the freehold owner of the Land with title absolute.
- (B) The Land is subject to a legal mortgage dated 10th day of September 2020 in favour of the Mortgagee.
- (C) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (D) The County Council is the local highway authority.
- (E) The Owner has made the Application to carry out the Development and the District Council refused to grant planning permission on 21 December 2020.
- (F) The Appeal has been submitted in respect of the District Council's refusal of the Application.
- (G) The Owner and the Mortgagee have agreed to enter into this Deed to give the following obligations in the manner hereinafter appearing.
- (H) The parties to this Deed agree that the requirements of this Deed meet the requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1. In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

<b>Act</b>	means the Town and Country Planning Act 1990 as amended;
<b>Appeal</b>	means a planning appeal submitted by the Owner in respect of the Application which has been given the reference: APP/D3830/W/21/3266563 by The Planning Inspectorate;
<b>Application</b>	means the application for outline planning permission for the Development which was validated on 5 <sup>th</sup> August 2020 by the District Council and allocated reference DM/20/2877;
<b>Commencement of the Development</b>	<p>means the carrying out of a material operation pursuant to the Planning Permission as defined in section 56(4) of the Act save that for the purposes of this deed and for no other purpose;</p> <ol style="list-style-type: none"> <li>1. the material operation that triggers the obligations in this Deed of Undertaking shall be for the purpose of the implementation of the Planning Permission and not the planning permissions <del>DM/17/1167, DM/18/0677 and DM/21/0014;</del></li> <li>2. operations consisting of site clearance, 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 shall not be included (and “Commence” and “Commencement” shall be construed accordingly)</li> </ol>
<b>Development</b>	means the development of the Land by the construction of a single ‘chapel’ crematorium with a single abated cremator and natural burial site with associated access, car parking, landscaping and drainage as set out in the Application and authorised by the Planning Permission;
<b>Footpath</b>	means the existing footpath, as shown edged in blue on Drawing No. Plan 917-GA-03A dated 27 07 2020
<b>Highways Agreement</b>	means an agreement made under section 278 of the Highways

Act 1980 and/or section 38 of the HA 1980 to be agreed between the Owner and County Council in relation to the Highway Works

**Highway Works**

means the Provision of roadway signage in the form of additional “SLOW” markings and transverse contrasting asphalt strips on the approach to B2028/B2110 Crossroads to indicate and give additional notification to drivers to approach with caution as shown in drawing ACE 19052-002A.

**Highway Works**

**Scheme**

means a written specification and scheme for the implementation of the Highway Works

**Land**

means the land against which this Deed may be enforced known as land north of Turners Hill Road, Turners Hill, West Sussex which is registered at HM Land Registry under title number WSX353388 and is shown for identification purposes only edged red on the attached plan and the Footpath which is registered at HM Land Registry under title numbers WSX365238 and WSX376912 and is shown for identification purposes only edged blue on the attached plan;

**Occupation**

means occupation for the purposes permitted by the Planning Permission but 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 **Occupied** and **Occupy** shall be construed accordingly

**Planning Permission**

means the planning permission if granted on Appeal by or on behalf of the Secretary of State pursuant to the Application;

**Secretary of State**

means the Secretary of State for Communities and Local Government or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Communities and Local Government by the Act.

**Stage 2 and Stage 3  
Safety Audit**

means road safety audits carried out as defined in standard GG 119 published by Highways 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. A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. 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.
- 1.8. References to clauses and Schedules are the clauses and Schedules of this Deed.
- 1.9. 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.
- 1.10. References to the District Council, the County Council, the Mortgagee and the Owner shall include the successors in title and assigns of each party including any local authority successor.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2. STATUTORY PROVISIONS**

- 2.1. This Deed constitutes a planning obligation for the purposes of section 106 of the Act, section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2. The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner and the Mortgagee with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.
- 2.3. The obligations contained in this Deed are enforceable by the District Council and the County Council in accordance with section 106 of the Act.

## **3. CONDITIONALITY**

This Deed is conditional upon the grant of Planning Permission save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 which shall come into effect immediately upon the completion of this Deed.

## **4. UNDERTAKINGS TO THE DISTRICT COUNCIL AND THE COUNTY COUNCIL**

The Owner undertakes with the District Council and the County Council to observe and perform the covenants, restrictions and obligations contained in this Deed including the Schedule hereto.

## **5. MORTGAGEE'S CONSENT**

- 5.1. The Mortgagee consents to the completion of this Deed and declares that from the date of this Deed its interest in the Land shall be bound by the terms of this Deed
- 5.2. 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 Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

## **6. RELEASE**

No person shall be liable for any breach of any of this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.

## **7. LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the District Council

## **8. OWNERSHIP**

- 8.1. The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Land.
- 8.2. The Owner agrees to give the District Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been 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 the area of the Land or unit of occupation purchased by reference to a plan.

## **9. AGREEMENTS AND DECLARATIONS**

The parties agree that:

- 9.1. nothing in this Deed constitutes a planning permission or an obligation to grant planning permission;
- 9.2. insofar as any clause or clauses of this Deed are held (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;
- 9.3. 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) it is modified by any statutory procedure or expires prior to the Commencement of the Development;

- 9.4. 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.
- 9.5. In the event that the Secretary of State makes a finding and expressly states within the decision notice relating to the Planning Permission that any of the individual planning obligations in this Deed (or part of said planning obligations) are not in accordance with the statutory requirements as is so identified by the Secretary of State they shall not be enforceable and cease to have effect notwithstanding that the remaining provisions of this Deed which (for the avoidance of doubt) shall take effect and remain in effect and enforceable.

#### **10. THIRD PARTY RIGHTS**

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Deed.

#### **11. GOVERNING LAW**

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

**IN WITNESS** whereof the parties hereto have duly executed this Deed on the day and year first before written.

**SCHEDULE**  
**UNDERTAKINGS TO THE DISTRICT COUNCIL AND THE COUNTY COUNCIL**

**Previous Permissions: The Owner undertakes:**

1. That the Planning Permission shall not be implemented and the Development shall not be Commenced in combination with or in addition to planning permission ~~DM/17/1167 (allowed under appeal reference: APP/D3830/W/17/3179872) or DM/18/0677 or~~ DM/21/0014 (a planning permission for renewal of DM/18/0677) and on the Commencement of the Development, the planning permissions ~~DM/17/1167, DM/18/0677 and~~ DM/21/0014 shall not be exercised, implemented or relied upon in any way and no works shall be undertaken pursuant to these planning permissions.

**Footpath Management and Maintenance:** The Owner undertakes

- 1 to manage and maintain the Footpath in good working order.
- 2 the Owner shall allow access subject to the Footpath to all users of the Development subject to the following reservations:
  - 2.1 the Owner may prevent access to the Footpath on any one day in each year being a Sunday or Bank Holiday only for the purpose of preventing the acquisition of public rights of way
  - 2.2 the Owner may restrict access to part or all of the Footpath in order to carry out repairs or maintenance or in any emergency in the interests of public safety

**Highway Works Scheme:** The Owner undertakes

- 1 To undertake a Stage 2 and Stage 3 Safety Audit in respect of the Highway Works
- 2 Not to allow Commencement of the Development until a Highway Works Scheme has been submitted to and approved in writing by the County Council provided that where a Highway Works Scheme is submitted to the County Council which is not approved a revised Highway Works Scheme shall, within 14 days of receipt of notice in writing from the County Council that the previous Highway Works Scheme is not approved, be submitted to the County Council for approval
- 3 Once the County Council has approved a Highway Works Scheme (the "Approved Highway Works Scheme") to obtain all requisite consents including without limitation entering into Highways Agreements with the County Council



- 4 After All Requisite Consents have been obtained to carry out in full the Approved Highway Works Scheme and to complete the Highway Works to the satisfaction of the County Council
- 5 Not without the consent of the County Council to allow Occupation of the Development until such Highway Works have been completed to the satisfaction of the County Council

Executed as a Deed by  
**HARTMIRES INVESTMENTS LIMITED**  
by Aidan Paul Beckford  
acting as a Director

Signature: .....

In the presence of

Signature of witness .....

Name (in BLOCK CAPITALS) .....

Address .....

Occupation .....

Executed as a Deed by  
**OMNI PROPERTY FINANCE LIMITED**  
by [ ]  
acting as a Director [Attorney]

Signature: .....

In the presence of

Signature of witness .....

Name (in BLOCK CAPITALS) .....

Address .....

Occupation .....