

DATED

20 03 2019

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990
RELATING TO LAND AT 3 STATION ROAD BOROUGH GREEN SEVENOAKS
TN15 8ER**

between

OWNER

and

MORTGAGEE

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THIS DEED is dated 20 03

2018 2019

- (1) INOVASI DEVELOPMENTS LIMITED incorporated and registered in England and Wales with company number 11239259 whose registered office is at Suite 3, 7 High Street Chislehurst England BR7 5AB **Owner**
- (2) BLUELAUREL LIMITED incorporated and registered in England and Wales with company number 04805800 whose registered office is at Clarence Street Chambers 32 Clarence Street Southend-on-Sea SS1 1BD and DUMORE INVESTMENTS LIMITED incorporated in Isle of Man of PO Box 95 2a Lord Street Douglas IM99 1HP Isle of Man **Mortgagee**

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 Owner intends to develop the Property pursuant to the Planning Permission
- (E) The Mortgagee is the registered proprietor of the charge dated 19 June 2018 referred to in entry number 4 and 5 of the charges register of Title number K220612 and has agreed to enter into this deed to give its consent to the terms of the unilateral undertaking.
- (F) In accordance with the Council's requirements on planning contributions 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:

Base Rate: 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: ground investigations; site survey works; temporary access construction works; ; and erection of any fences and hoardings around the Property.

Contribution: the sum of £4751.00 towards the cost for provision and/or improvement of open space facilities in accordance with policy OS3 of the Council's adopted Development Plan Document 'Managing Development and the Environment'.

Council: Tonbridge and Malling Borough Council of Gibson Building Gibson Drive Kings Hill West Malling Kent ME19 4LZ

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

Development: the development of the Property described in the Planning Application.

Dwelling: means any dwellings (including a house flat bungalow or maisonette) approved for construction pursuant to the Planning Permission and any reference to "Dwellings" shall be construed accordingly

Index Linked: increased in accordance with the following formula:

Amount payable = the Contribution x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

Occupation: means occupation of the Development for the purposes permitted by the Planning Permission but not including the occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display, or occupation in relation to security operation and "Occupy", "Occupied" and "Occupiers" shall be construed accordingly

Plan: the plan attached to this deed.

Property: the freehold land at 3 Station Road Borough Green Sevenoaks TN15 8ER shown edged red on the Plan and registered at HM Land Registry with absolute title under title number K220612

Planning Application: an application for planning permission registered by the Council on 20th September 2018 under reference number TM/18/02230/FL for the conversion of the Property into 5 self-contained flats, single storey rear extension alterations to the external appearance of the building and associated external works.

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

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** includes fax but not 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.
- 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:

- (a) to pay the Contribution to the Council on the Occupation of the third (3) Dwelling constructed under the Planning Permission .
- (b) to give at least five (5) Working Days written notice to the Council of the Commencement Date and the date of Occupation of the second (2) and third (3) Dwellings on the Property.

4. INDEXATION OF CONTRIBUTION

- 4.1 All financial contributions payable to the Council shall be Index Linked.
- 4.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

5. MORTGAGEE'S CONSENT

- 5.1 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.

5.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed at a time when the Mortgagee is in possession of all or any part of the Property.

6. 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.

7. 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.

8. LOCAL LAND CHARGE

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

8.2 The Council will within ten (10) Working Days of the Contribution being paid in full or the obligation to make the Contribution contained within this Deed is otherwise discharged, issue written confirmation of satisfaction of the Contributions due and that obligations of the Owner contained within this Deed are discharged and at the same time effect the cancellation of all entries in the register of the local land charge in respect of this Deed.

9. INTEREST ON LATE PAYMENT

If the Contribution has not been paid to the Council in accordance with clause 3(a) of this Deed, the Owner shall pay the Council interest on the 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 date specified in clause 3(a) to and including the date of payment.

10. OWNERSHIP

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

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.

11. NOTICES

11.1 A notice 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.

11.2 Any notice to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at: Gibson Building Gibson Drive Kings Hill West Malling Kent ME19 4LZ marked for the attention of the Head of Planning Services;
- (b) to the Owner at: Suite 3, 7 High Street, Chislehurst England BR7 5AB for the attention of John Friis, Director.

(c) to the Mortgagee at:

Bluelaurel Limited

Address: Clarence Street Chambers, 32 Clarence Street, Southend-On-Sea, Essex, SS1 1BD

Attention: Michael Dean

Dumore Investments Limited

Address: 2a Lord Street, Douglas, PO Box 95, IM99 1HP, Isle of Man

Attention: Zain Mirza;

and with a copy sent to Avamore Limited

Address: Cannon Place, 78 Cannon Street London EC4N 6AF

Attention: Amit Majithia

or as otherwise specified by the relevant person by notice in writing to each other person.

11.3 Any notice given in accordance with clause 11.1 and clause 11.2 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.

11.4 A notice given under this deed shall not be validly given if sent by e-mail.

11.5 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.

12. **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.

13. **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.

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

H. M. LAND REGISTRY

KENT

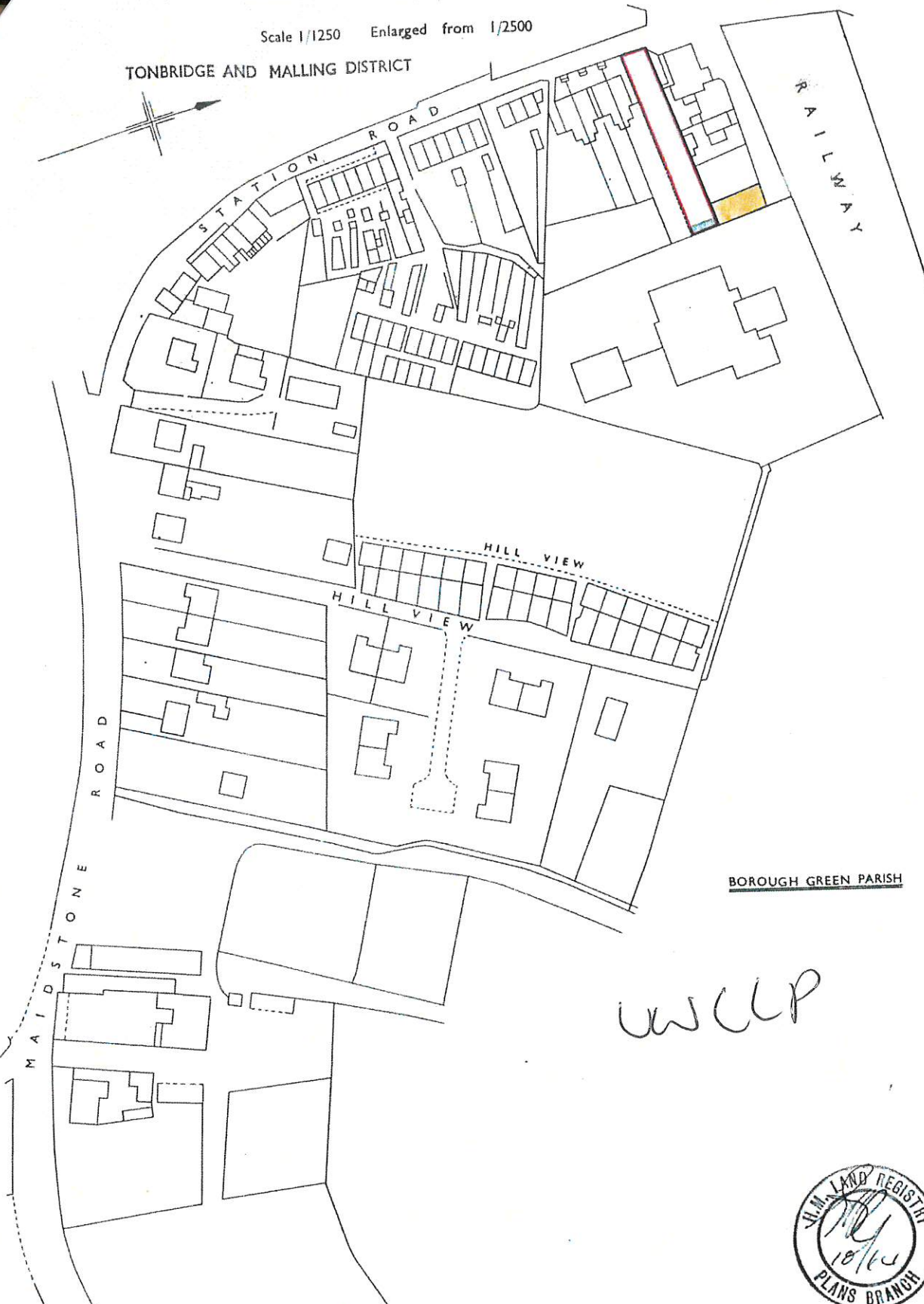
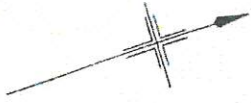
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SECTION C

Scale 1/1250 Enlarged from 1/2500

TONBRIDGE AND MALLING DISTRICT



BOROUGH GREEN PARISH

wclp





JF

INOVASI

Executed as a deed by
~~INVOAST~~ DEVELOPMENTS
LIMITED
acting by
a director and

a director/secretary


..... JOHN FRISS
Director

.....
Director

JF

BLUCLAUREL

Executed as a deed by
~~BLUCLAUREL~~ LIMITED
acting by
a director and

a director /its secretary

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Director
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Director

Executed as a deed by
DUMORE INVESTMENTS
LIMITED
acting by

a director and

a director /its secretary

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Director
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Director

Executed as a deed by
INOVASI DEVELOPMENTS
LIMITED

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Director

acting by
a director and

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Director

a director/secretary

Executed as a deed by
BLUELAUREL LIMITED
acting by
a director and


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Director


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Director

a director /its secretary

Executed as a deed by
DUMORE INVESTMENTS
LIMITED
acting by

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Director

a director and

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Director

a director /its secretary

Executed as a deed by
INOVASI DEVELOPMENTS
LIMITED

acting by
a director and

a director/secretary

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Director

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Director

Executed as a deed by
BLUELAUREL LIMITED

acting by
a director and

a director /its secretary

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Director

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Director

Executed as a deed by
DUMORE INVESTMENTS
LIMITED

acting by **ZAIN MIRZA.**

a director and


ZAHID MIRZA
a director /its secretary

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Director

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Director

Executed as a deed by
~~INVOAST~~ DEVELOPMENTS
LIMITED
acting by
a director and

a director/secretary


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Director

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~~BLUELAUREAL~~ LIMITED
acting by
a director and

a director /its secretary

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Director

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a director and

a director /its secretary

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Director

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Director