

UNILATERAL UNDERTAKING

Under Section 106

Town and Country Planning Act 1990 (as amended)

By

(1) PEMBURY ROAD LIMITED

and

(2) OSF (UK) LIMITED

TO

(3) TONBRIDGE AND MALLING BOROUGH COUNCIL

In relation to the site of

The Primrose Public House, Pembury Road, Tonbridge, Kent, TN9 2JJ

THIS DEED is dated 14th February 2019

FROM:

- (1) **Pembury Road Limited** of 25c Dawes Road, London, SW6 7DT (“the Owner”)
- (2) **OSF (UK) I LIMITED** (company registration number 09581638) of 8 Wimpole Street, London WG 9SP (“the Mortgagee”)

(“The Owner” shall include the successors in title and assigns of the Owner, any deriving title through or under the Owner and anyone claiming through, under or in trust for the Owner)

TO:

TONBRIDGE AND MALLING BOROUGH COUNCIL Council Offices, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ (“The Council”)

INTRODUCTION

- A. The Owner has an interest in the Site by virtue of being the registered proprietor and has made application under reference TM/18/02488/FL).
- B. The Deed is a Planning Obligation for the purposes of Section 106 of the Town and Country Planning Act 1990 and is enforceable by the Council, which is the local planning authority for the area including the Site.
- C. The covenant is required in order to meet the increased demand for public open space and associated facilities, which will be caused by the Development.

INTERPRETATION

- 1. In this Deed the following words and expressions shall have the meanings given opposite them:

Words and Expressions	Meanings
Development	The development of the Site pursuant to the Planning Permission by the erection of six dwellings.
Planning Application	The application for planning permission for Development registered by the Council under reference number TM/18/02488).

Planning Permission	The planning permission to be granted pursuant to the Planning Application.
Site	The land shown edged red on the plan attached hereto (Plan PO.1) and located at The Primrose Public House, Pembury Road, Tonbridge, Kent, TN9 2JJ.
Commencement of the Development	The carrying out, pursuant to the Planning Permission, of any material operation as defined in Section 56(4) of the Town and Country Planning Act 1990 (as amended). “Commence” and “Commencing” and other like terms shall be construed accordingly.
Index	Means “All items” index figures of the Index of Retail prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as the Council reasonably requires.
Index Linked	Means increased in accordance with Clause 6 to reflect any increase in the Index during the period from and including the date of the actual payment.
Open Space and Recreation Contribution	Means the sum of £15,756 (Fifteen thousand seven hundred and fifty six Pounds) for use by the Council for the provision, enhancement or maintenance of open space and children’s play equipment in the locality of the Development.

1.2 Words incorporating the singular meaning, where the context so admits, include the plural meaning and vice versa.

2. OWNER’S COVENANTS

2.1 The Owner covenants with the Council in the terms set out in Schedule 1 to this Undertaking.

3. LEGAL EFFECT AND ENFORCEABILITY

- 3.1 The construction, validity, performance and enforcement of this Deed shall be governed by English Law.
- 3.2 Wherever there is more than one person names as a party, this Deed can be enforced against all if those persons jointly and against each individually.
- 3.3 This Deed shall be of no effect until it has been dated.
- 3.4 The land bound by this Deed is the Site as identified on the plan attached to this Undertaking, and comprising land within title numbers K176791 and K826014 registered at HM Land Registry.

4. CONDITIONALITY

- 4.1 The Owner's undertakings are conditional upon:
- 4.2 The Planning Permission being issued
- 4.3 The Council not enforcing this Deed against any person who has parted with their entire interest in the Site (except for liability for any subsisting breach arising prior to parting with such interest)
- 4.4 The Council not enforcing this Deed against a person whose interest in any part of the Site is solely for the purpose of the supply of electricity, gas, water, drainage or telecommunication services.
- 4.5 The Council not enforcing this Deed against individual occupiers or owner-occupiers of any dwelling erected pursuant to the Planning Permission.

5. GENERAL

- 5.1 The obligations in this Deed shall be enforceable in accordance with the provisions of S106 (3) of the Town and County Planning Act 1990.
- 5.2 None of the provisions of this Deed shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.
- 5.3 If the permission granted pursuant to the Planning Application shall expire before the Development is begun as defined above or shall at any time be revoked this Deed shall forthwith determine and cease to have effect.
- 5.4 Nothing in the Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Deed.
- 5.5 This Deed is a local land charge and shall be registered as such.
- 5.6 The Owner has paid the legal fee to the Council prior to the completion of this Deed.
- 5.7 No person shall be liable for any breach of the terms of this Deed arising after he has parted with his entire interest in the Land, but he shall remain liable for any subsisting breach which arose before he entirely parted with his interest.

6 INDEXATION

Where any financial contributions in this Undertaking is to be "Index Linked" then the amount of the contribution after application of the Index shall be calculated according to the following formula:

Amount after indexation – $A \times B/C$

Where:

- A- Is the contribution to the Index Linked
- B- Is the Index at the date at which the amount is to be paid: and
- C- Is the Index at the date of this Undertaking.

7 MORTGAGEE CONSENT

The Mortgagee is the registered proprietor of a charge dated 26 September 2018 referred to in entry numbers 1 and 2 of the charges register of Title number K176791 and of a charge dated 26 September 2018 referred to in entry numbers 1 and 2 of the charges register of title number K826014 and has agreed to enter into this Deed to give its consent to the terms of this Deed but the Mortgagee shall not be personally liable for any breach of the obligations in this deed.

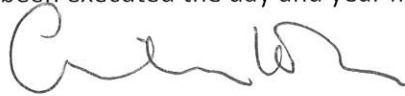
SCHEDULE 1

PLANNING OBLIGATIONS

1. The Owner COVENANTS with the Council as follows:
 - 1.1 To pay the Council on or before the Commencement of the Development the following sum Index Linked namely the Open Space and Recreation Contribution in The Owner shall not commence the Development until the aforementioned contribution is paid in full.

IN WITNESS whereof this Deed has been executed the day and year first before written

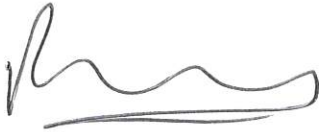
Executed as a Deed by the Owner



Acting by a director ⁱⁿ on the

presence of a witness

Signature of witness



Name of witness

RICHARD CHARLES WRELL

Address of witness

28 BRAMFORD ROAD
LONDON
SW18 1AP

IN WITNESS whereof this Deed has been executed the day and year first before written

Executed as a Deed by the Mortgagee

acting by a director in the

presence of:

Signature of witness

Name of witness

Address of witness

IN WITNESS whereof this Deed has been executed the day and year first before written

Executed as a Deed by the Owner

Acting by a director in the

presence of a witness

Signature of witness

Name of witness

Address of witness

IN WITNESS whereof this Deed has been executed the day and year first before written

Executed as a Deed by the Mortgagee

acting by a director in the

presence of:



Signature of witness



Name of witness JONATHAN A GLOVER

Address of witness

c/o Ortus Secured Finance
8 Wimpole Street,
London,
W1G 9SP



General Notes

The drawing is copyright of Darling Associates. This drawing shall not be scaled. All dimensions are in mm unless otherwise stated. All dimensions shall be checked on site prior to commencing the works and any discrepancies to be reported to Darling Associates. All works shall conform to the current edition of the building regulations and other statutory requirements. All materials and workmanship shall conform with the relevant British Standard specifications and codes of practice. If this drawing forms part of an application for planning permission, it shall not be used for any other purpose without the express permission of Darling Associates. This drawing may incorporate information from other professionals. Darling Associates cannot accept responsibility for the integrity and accuracy of such information. Any clarification and/or additions that are required appertaining to such information should be sought from the relevant profession or their appointment representative.

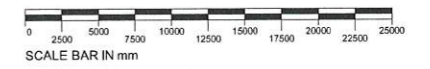
Drawings, specifications and schedules are to be read in conjunction with the following where applicable: Employer's Requirements documents, Agreements to Lease, Structural Engineer's drawings and specifications, Civil Engineer's drawings and specifications, Survey Drawings, Party Wall Boundary Awards, Other specialist design consultant's requirements as appointed by the Main Contractor, Other specialist design sub-contractor's requirements as appointed by the Main Contractor.

Key Plan



Notes

Planning Application Boundary - - - - -



PL1	Planning Revision	08.11.18	TP	TP
PL	Issued for planning	28.08.18	TP	TP
REV	NOTES	DATE	BY	AUTH

DARLING ASSOCIATES
ARCHITECTS

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DRAWING STATUS
Planning

TITLE		
Proposed Site Plan		
PROJECT		
Tonbridge		
SCALE AT A1:	SCALE AT A3:	
1:250	1:500	
JOB NO.	DRAWING	REV
18032	(03)-P-S001	PL1

