



Dated 21 DECEMBER 2023

Deed of Covenant and Indemnity

1. NICHOLAS PHILIP GILES and ALISON LESLEY CAROLINE BROADBERRY
2. KENNETH RAYMOND ALAN HOLFORD and ARC TRUSTEES LIMITED, as trustees of K Holford Company Pension Scheme
3. ANDREW MICHAEL DEAN and SUZANNE DEAN
4. RICHBOROUGH ESTATES LIMITED
5. LONE STAR LAND LIMITED

Land at OS Parcel 1570 adjoining and west of Chilgrove Drive and adjoining and north of Camp Road Heyford Park



THIS DEED is dated 21 DECEMBER 2023

Parties

- (1) **NICHOLAS PHILIP GILES and ALISON LESLEY CAROLINE BROADBERRY** whose address is c/o Edwin Coe LLP 2 Stone Buildings London WC2A 3TH ("**First Owner**");
- (2) **KENNETH RAYMOND ALAN HOLFORD** of 55 Napier Street Bletchley MK2 2NF and **ARC TRUSTEES LIMITED** (incorporated in England and Wales under company number 08818861) as the TRUSTEES OF K HOLFORD AND COMPANY PENSION SCHEME whose registered office address is New Maxdov House 130 Bury New Road Manchester England M25 0AA ("**Second Owner**")
- (3) **ANDREW MICHAEL DEAN and SUZANNE DEAN** of Letchmere Camp Road Upper Heyford Bicester OX25 5LS ("**Third Owner**")
- (4) **RICHBOROUGH ESTATES LIMITED** (incorporated in England and Wales under company number 04773757) whose registered office address is Waterloo House Waterloo Street Birmingham West Midlands B2 5TB ("**First Promoter**")
- (5) **LONE STAR LAND LIMITED** (incorporated in England and Wales under company number 07134980) whose registered office address is 50 High Street Henley-In-Arden England B95 5AN ("**Second Promoter**")

AGREED TERMS

1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in this Deed.

"**Appeal**" means the appeal submitted by the First Promoter and the Second Promoter against the District Council's refusal of the Application and allocated reference number APP/C3105/W/23/3326761;

"**Application**" means the application for outline planning permission submitted to the District Council and validated on 4 April 2022 for the Development and allocated reference number 21/04289/OUT;

"**CIL**" the community infrastructure levy arising under the Community Infrastructure Levy Regulations 2010 or any replacement thereof;

"**Commencement of Development**" shall have the same meaning as set out in the Section 106 Agreement;

"**Commencing Party**" shall mean any party who by their actions or words shall allow or permit or suffer to be allowed or permitted the Commencement of Development prior to the occurrence of any of the events listed in clause 3.2;

"**Development**" shall have the meaning set out in the Section 106 Agreement;

"**District Council**" means Cherwell District Council of Bodicote House White Post Road Bodicote Banbury Oxfordshire OX15 4AA;



“**Land A**”, “**Land B**” and “**Land C**” shall each have the same meanings as given to them respectively in the Section 106 Agreement.

“**Liabilities**” means all liabilities, actions, claims, costs, losses, demands, proceedings and expenses howsoever arising or suffered or incurred by the parties as a result of:

- (a) entering into the Section 106 Agreement;
- (b) the Planning Permission being implemented; and
- (c) all CIL associated with the Planning Permission and the development authorised by it to the extent such CIL is triggered by the action of the Commencing Party or anyone under the control of the Commencing Party or with its express or implied authority

and “**Liability**” shall be construed accordingly;

“**Owner**” means any one or more of the First Owner, the Second Owner and the Third Owner as the context admits.

“**Planning Permission**” means the outline planning permission which may be issued pursuant to the Appeal and includes any variation of or amendment to it and all reserved matters approvals in relation to it;

“**Section 106 Agreement**” means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 and dated on the date hereof and made between Cherwell District Council (1) Oxfordshire County Council (2) Nicholas Philip Giles and Alison Lesley Caroline Broadberry (3) Kenneth Raymond Alan Holford and ARC Trustees Limited as the Trustees of K Holford and Company Pension Scheme (4) Andrew Michael Dean and Suzanne Dean (5) Richborough Estates Limited (6) Lone Star Land Limited (7);

“**Site**” shall have the meaning set out in the Section 106 Agreement;

- 1.1 Any reference to an Owner, the First Promoter and the Second Promoter shall include that party’s personal representatives, successors or permitted assigns.
- 1.2 Any reference to an enactment includes any statutory modification or re-enactment of it for the time being in force.
- 1.3 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation.
- 1.4 Where the context so requires:
 - 1.4.1 words importing the singular number only shall include the plural number and vice versa;
 - 1.4.2 words importing gender shall include the masculine feminine and neuter genders; and
 - 1.4.3 words importing persons include bodies, corporate associations and partnerships and vice versa.



- 1.5 Where a party includes more than one person any obligation on that party shall be joint and several obligations and liabilities of those parties and where more than one party enters into any obligation or liability those parties are jointly and severally liable.
- 1.6 Where a party includes more than one person any obligation or liability to that party shall be to each and every person comprising that party individually as well as collectively
- 1.7 Words denoting an obligation on the party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause, permit or allow infringement of this restriction.
- 1.8 Except where the contrary intention appears, a reference to the "parties" is a reference to all parties to this Deed and a reference to a "party" is a reference to each of the parties to this Deed.

2 INDEMNITY

- 2.1 Any party or parties who becomes a Commencing Party, or who otherwise breaches any of their obligations under this Agreement, will with effect from the date hereof indemnify and keep indemnified the other parties against all Liabilities.
- 2.2 The parties shall be released from the indemnity referred to in Clause 2.1 (save for any Liability which has arisen prior to such date) on the earlier of the following events:
 - 2.2.1 Planning Permission is quashed by any Court as result of any legal proceedings or is revoked pursuant to Section 97 of the Town and Country Planning Act 1990; or
 - 2.2.2 the Planning Permission expires before the Commencement of Development; or
 - 2.2.3 the transfer of the whole of the Site to a third party; or
 - 2.2.4 the District Council confirms to the parties in writing that all of the obligations of the Section 106 Agreement have been either performed or discharged; or
 - 2.2.5 the Appeal is dismissed and no Planning Permission is granted.
- 2.3 Sums due pursuant to Clause 2.1 above shall be payable within 14 days of notice from the parties to the Commencing Party of Liabilities incurred (which shall be provided in writing together with evidence of such costs having been incurred) and, if not so paid, shall attract interest calculated on a daily basis from the due date until actually paid at the rate of 4% above the base lending rate of National Westminster Bank Plc from time to time.

3 NON-IMPLEMENTATION

- 3.1 Each of the parties separately covenants with each of the other parties, separate with one another, not to allow or permit or suffer to be allowed or permitted the Commencement of Development or take any other action which would result in any Liabilities arising on that part of the Site of which they are the owner or promoter without the prior written consent of all the parties.
- 3.2 The provisions of clause 3.1 shall cease to have effect on any of the following events:



3.2.1 when the prior written consent of all of the parties is given to Commencement of Development; or

3.2.2 when the Commencing Party is released from the indemnity referred to in clause 2.1, under clause 2.2,

but the other provisions of this Deed shall remain in full force and effect.

4 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless expressly stated nothing in this Deed will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

5 GOOD FAITH

The parties to this agreement each acknowledge and agree with each of the others that

- (a) the First Owner is the current registered proprietor of Land A, the Second Owner is the current registered proprietor of Land B and the Third Owner is the Current registered proprietor of Land C;
- (b) if the Planning Permission is granted, none of the Owners will do, or allow to be done, anything which constitutes a Commencement of the Development themselves;
- (c) is the intention of all the parties, if the Planning Permission is granted, that the whole or substantially the whole of the Site will be sold to a third party prior to any such Development commencing;
- (c) the obtaining of Planning Permission and subsequent sale of the whole or substantially the whole of the Site will be better facilitated with the mutual co-operation and assistance of all of them; and
- (d) that each of the parties will accordingly act in the utmost good faith in relation to each to each other in relation to the provisions of this Deed.

6 DISPOSITIONS

Each Owner separately covenants further with each other Owner that if any Owner (a "Disponor") wishes, prior to the date on which it would otherwise be released from all its obligations under the Agreement pursuant to clause 2 and/or Clause 3 of this Agreement, to sell, lease, mortgage, charge or otherwise dispose of all or any of its interest in the Site (a "Disposition") to any person (a "Disponee") then the Disponor shall not complete, or enter into any legally binding agreement in relation to, the same unless:

- (a) each other Owner has previously agreed in writing to consent to such Disposition (such consent not to be unreasonably withheld);
- (b) the Disponee immediately delivers to each other Owner a deed of covenant whereby the Disponee covenants with each such other Owner that it will at all times assume and comply with all the obligations of the Disponor contained in the Section 106 Agreement and this Agreement.



7 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.

8 ASSIGNMENT

No party may at any time transfer, assign, novate, mortgage, charge or otherwise dispose of the benefit of, and/or any of its obligations under, the Section 106 Agreement or this Agreement without the prior written consent of each of the other parties.

9 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Deed, but all the counterparts shall together constitute the same Deed. No counterpart shall be effective until each party has executed at least one counterpart.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed

SIGNED AS A DEED by the said **NICHOLAS PHILIP GILES** in the presence of:

Witness signature *[Handwritten Signature]*

Witness Name (BLOCK CAPS) **LARA PERSELL**

Address **2 STONE BUILDINGS**

LINCOLN'S INN, LONDON, WC2A 3TH

Occupation **SOLICITOR**

[Handwritten Signature]
BY HIS ATTORNEY
MATTHEW DAVID BARNETT

SIGNED AS A DEED by the said **ALISON LESLEY CAROLINE BROADBERRY** in the presence of:

Witness signature *[Handwritten Signature]*

Witness Name (BLOCK CAPS) **D W MARK MANHONNET**

Address **2 Stone Buildings**

**Lincoln's Inn
London WC2A 3TH**

Occupation **Solicitor**

[Handwritten Signature]



SIGNED AS A DEED by the said KENNETH

RAYMOND ALAN HOLFORD as trustee of K Holford Company Pension Scheme in the presence of:

Handwritten signature of Kenneth Raymond Alan Holford

Witness signature

Witness Name (BLOCK CAPS)

Andrew Woods
Solicitor

Address

S E SOLICITORS

52-54 The Green, Banbury,

OX16 9AB.

Occupation

SIGNED AS A DEED by ARC

TRUSTEES LIMITED acting by a Trustee on behalf of K Holford Company Pension Scheme in the presence of:

A.R

Witness signature *CWright*

Witness Name (BLOCK CAPS)

CLAUDIA WRIGHT.

Address *130 BURY NEW ROAD*

MANCHESTER

Occupation *ADMINISTRATOR*

SIGNED AS A DEED by the said ANDREW MICHAEL DEAN in the presence of:

Andrew Dean

Witness signature *William Hutchison*

Witness Name (BLOCK CAPS)

WILLIAM HUTCHISON

Address *28, NEWTON ROAD*

DUNDEE

Occupation *COURIER*



SIGNED AS A DEED by the said SUZANNE

Suzanne Dean

DEAN in the presence of:

Witness signature

William Hutchison

Witness Name
(BLOCK CAPS)

WILLIAM HUTCHISON

Address

28, NEWTON ROAD
DUNDEE

Occupation

COURIER

EXECUTED AS A DEED by

RICHBOROUGH ESTATES LIMITED acting

by a Director in the presence of:

Witness signature

Witness Name
(BLOCK CAPS)

Address

Occupation

EXECUTED AS A DEED by **LONE STAR
LAND LIMITED** acting by a Director in the
presence of:

Rosemary

Witness signature

Julie Hodge

Witness Name
(BLOCK CAPS)

JULIE HODGE

Address

Lodders Solicitors LLP
Number Ten, Elm Court, Arden Street
Stratford-upon-Avon CV37 6PA

Occupation

SOLICITOR