

Dated

28<sup>th</sup> July

2023

**WAYNE RICHARD EDUARDO BROWN**

**(1)**

**and**

**PRIDEAUX ASSET LIMITED**

**(2)**

**to**

**THE CORNWALL COUNCIL**

**(3)**

**Planning obligation by Unilateral Undertaking under Section 106 of  
the Town and Country Planning Act 1990**

relating to land at

**The Packhorse Inn and land west of The Packhorse Inn, Fore Street,  
St Blazey, Cornwall, PL24 2NH**

THIS UNILATERAL UNDERTAKING BY DEED is made the 28<sup>th</sup> day of July 2023

**BY:**

- 1) **WAYNE RICHARD EDUARDO BROWN** of The Bell House, 17b Trenovissick Road, Par, Cornwall PL24 2DX (**"the First Owner"**); and
- 2) **PRIDEAUX ASSET LIMITED** of 7 Shepherds Fold, Holmer Green, High Wycombe, England, HP15 6XZ (Registered Company Number 09020876) (**"the Second Owner"**)

**TO:**

- 3) **THE CORNWALL COUNCIL** of County Hall Treyew Road Truro TR1 3AY ( **"the Council"** )

**RECITALS**

- 1) The Council is the Local Planning Authority for the purposes of this Deed for the area within which the land described in the First Schedule (**"the Land"**) is situated and by whom the obligations contained in this Deed are enforceable
- 2) The First Owner is interested as freehold owner in that part of the Land which is registered at the Land Registry with title absolute under title number CL128286
- 3) The Second Owner is interested as freehold owner with title absolute in that part of the Land which was transferred out of land with title number CL128286 pursuant to the transfer dated 15<sup>th</sup> June 2022 between the First Owner and the Second Owner which is pending registration at the Land Registry
- 4) The First Owner has applied to the Council for planning permission for the Development on the Land and the Council is minded to grant approval of the Development under reference number PA22/10371 (**"the Planning Permission"**) subject to the Owners first entering into this Deed

**NOW THIS DEED** is made in pursuance of Section 106 of the 1990 Act and contains planning obligations and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:

## **1. Definitions and interpretation**

### **1.1 Definitions**

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

- 1.1.1 **“the 1990 Act”** means the Town and Country Planning Act 1990 (as amended)
  - 1.1.2 **“the 1999 Act”** means The Contracts (Rights of Third Parties) Act 1999 as may be amended from time to time
  - 1.1.3 **“the Application”** means the application for full planning permission to carry out the Development which was validated by the Council on 6<sup>th</sup> December 2022 and allocated reference number PA22/10371.
  - 1.1.4 **“Commencement of Development”** means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose):
    - 1.1.4.1 operations consisting of site clearance;
    - 1.1.4.2 demolition work;
    - 1.1.4.3 archaeological investigations;
    - 1.1.4.4 investigations for the purpose of assessing ground conditions;
    - 1.1.4.5 remedial work in respect of any contamination or other adverse ground conditions;
    - 1.1.4.6 diversion and laying of services;
    - 1.1.4.7 erection of any temporary means of enclosure;
    - 1.1.4.8 the temporary display of site notices or advertisements; and
- “Commence” “Commencement of Development” and “Commence Development”** shall be construed accordingly

- 1.1.5 **"County"** means the County of Cornwall
- 1.1.6 **"Development"** means construction of eight new dwellings; provision of vehicular access road, vehicular parking, external amenity garden spaces; construction of commercial building with kitchen to ground floor and letting rooms to first floor; demolition of existing single-storey extension and replacement with new single-storey pub restaurant extension; demolition of section of boundary wall and out-building; renovation, alteration and repair to listed building
- 1.1.7 **"Dwelling"** means any dwelling (including but not limited to a house, flat, maisonette or bungalow) permitted pursuant to the Planning Permission and the term "Dwellings" shall mean all of them
- 1.1.8 **"the Expert"** means a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties
- 1.1.9 **"Interest"** means 4% above the Base-lending rate of the National Westminster Bank Plc from time to time or such other bank as the Council may notify the Owners
- 1.1.10 **"Land"** means the Land referred to in the First Schedule and Recitals 1, 2 and 3 hereof
- 1.1.11 **"Occupation"** means occupation for the purposes of residential use 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 the terms "Occupied" "Occupy" and "Occupier" shall be interpreted accordingly;
- 1.1.12 **"Off Site Public Open Space"** means the provision and/or improvements of open space facilities at the Trail Blazer Play Area, Polgrean Place and/or the provision and/or improvements of open space facilities within the Parish.
- 1.1.13 **"Off Site Public Open Space Contribution"** means the sum of £1579.00 (one thousand five hundred and seventy nine pounds) per Dwelling increased by the Percentage towards the provision of Off Site Public Open Space



- 1.1.14 **“the Owners”** means the First Owner and the Second Owner.
- 1.1.15 **“the Parish”** means the parish of St.Blaise within the County
- 1.1.16 **“Percentage”** means the increase in the percentage rise in the United Kingdom General Index of Retail Prices (All Items) when the last published index figure before the day of payment is compared with the last published index figure before the date of this Deed but if the basis for calculation between the new and the old figures is officially published that method shall be used for the purposes of comparison under this provision;
- 1.1.17 **“the Plan”** means the plan referred to in the First Schedule and annexed to this Deed
- 1.1.18 **“the Planning Permission”** means the planning permission pursuant to the Application
- 1.1.19 **“Relevant Parties”** means the parties to this deed or their successors in title or assigns and in the case of the Council includes any statutory successors as local planning authority
- 1.1.20 **“Section 73 Permission”** means any planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes the condition imposed on the Planning Permission subject to which any such planning permission is granted

## 1.2 Interpretation

- 1.2.1 The expressions “the Council” and “the Owners” shall include their successors in title and assigns and any person(s) or body corporate deriving title through or under them
- 1.2.2 Words importing the masculine gender only shall include all other genders and vice versa
- 1.2.3 Words importing the singular shall include the plural and vice versa
- 1.2.4 Words importing persons shall include companies and corporations and vice versa
- 1.2.5 Where any party consists of two or more persons companies or corporations the Deed expressed to be made by that party and the conditions and provisions

contained in this Deed shall be deemed to have been made jointly and severally by the persons named as that party

- 1.2.6 Save where a contrary intention is expressed a reference herein to a clause or Schedule shall be deemed to be a reference to a clause or Schedule of this Deed and reference to a sub-clause paragraph or Part shall be deemed to be a reference to a sub clause or paragraph or Part of the clause or Schedule in which such reference appears
- 1.2.7 All references 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
- 1.2.8 The clause and paragraph headings herein are for ease of reference only and shall not affect the interpretation of this Deed

## **2. STATUTORY PROVISIONS**

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owners' interest in the Land and to the intent that the obligations on the part of the Owners herein contained falling within the provisions of Section 106 of the 1990 Act shall be planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council as local planning authority in accordance therewith but subject as hereinafter provided
- 2.2 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but

without prejudice to liability for any subsisting breach of covenants prior to parting with such interest

- 2.3 This Deed shall take effect from the date hereof PROVIDED THAT if the Planning Permission is revoked or expires by the effluxion of time then this Deed shall cease to have effect provided always that at the time of the said revocation no development has begun within the meaning of Section 56 of the 1990 Act;
- 2.4 The provisions of the 1999 Act shall not apply to this Deed and no third party shall have any rights to enforce the terms of this Deed
- 2.5 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.
- 2.6 In the event the Council shall at any time grant a Section 73 Permission after the date of this Deed:
- (i) obligations in this Deed will relate to and bind any and all such Section 73 Permission;
  - (ii) the definitions of Application, Development and Planning Permission shall include reference to any such subsequent planning applications for the Section 73 Permission, the development permitted by the Section 73 Permission and the Section 73 Permission itself and this Deed shall hereafter take effect and be read and construed accordingly;

PROVIDED THAT

- (iii) nothing in this clause will fetter the discretion of the Council in determining any planning application for a Section 73 Permission and the appropriate planning obligations required in connection with the determination of any such planning application and any such further planning obligation or amendment by deed in

connection with any Section 73 Permission in the event the Council considers it necessary.

### **3. COVENANTS**

The Owners covenant to the Council to fulfil the obligations and restrictions specified in this Deed

### **4. OWNERS' FURTHER AGREEMENT**

The Owners further agree as follows:

- 4.1 To supply to the Council (within 21 days of the Council's written request to do so) such information as the Council within its reasonable discretion considers that it requires in order to determine whether the terms and conditions of this Deed are being observed
- 4.2 To pay the Council's reasonable legal fees and any costs incurred in the negotiation preparation and execution of this Deed on completion of this Deed

### **5. REGISTRATION**

The Owners hereby consent to the registration of:

- (a) This Deed as a Local Land Charge by the Council
- (b) This Deed on the Charges Register of:
  - Title Number CL128286, and
  - the new Title Number to be assigned in relation to the transfer of part of the Land dated 15<sup>th</sup> June 2022 which is pending registration at the Land Registry with title absolute from title number CL128286

at the Land Registry by the Owners on each disposal and Office Copies from Land Registry provided to the Council as evidence of registration



## **6. NOTICES**

Any notice consent or approval required to be given under this Deed to any party to this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post to the address of the party aforesaid or such other address for service as shall have been previously notified by the party to the other parties

## **7. SETTLEMENT OF DISPUTES**

7.1 Any dispute arising out of the provisions of this Deed shall be referred to the Expert for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Deed by the courts and / or in accordance with Section 106(6) of the 1990 Act

7.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute

7.3 The decision of the Expert shall be final and binding upon the Relevant Parties and subject to the following provisions:-

- (a) the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;
- (b) the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to him before making his decision;
- (c) the Expert shall make his decision within the range of any representations made by the Relevant Parties who are in dispute themselves;
- (d) where there is a dispute as to the amount of any contribution the Owners shall pay its estimate of such contribution to the Council at the time specified in this Deed and shall pay any difference between that figure and the amount determined by the Expert within 28 days of the Expert's decision together with Interest thereon



calculated (in accordance with this Deed) from the date the payment was required until the date it is made

## **8. INTEREST AND INDEXATION**

8.1 All sums payable to the Council pursuant to this Deed shall be increased by the Percentage.

8.2 If any payment due to be paid by the Owners under the terms of this Deed is paid late or the Owners fail to settle any account that may be properly and duly rendered to the Owners the sum due shall accrue Interest from the date payment is due to the actual date of the payment.

## **9. ENFORCEABILITY**

This Deed shall not be enforceable against any statutory undertaker or service company who acquires an interest in the Land solely for the purposes of its undertaking.

## **10. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales

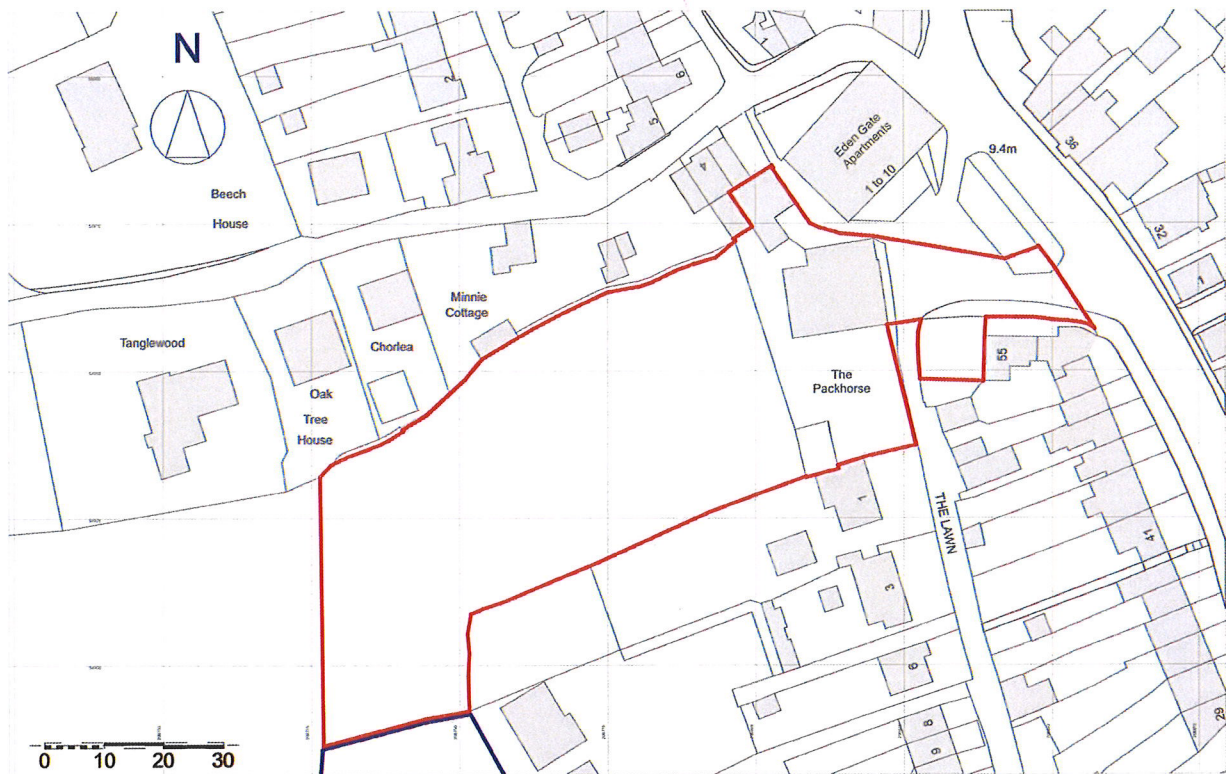
**IN WITNESS** whereof the Owners hereto has executed this Deed on the day and year first before written

**THE FIRST SCHEDULE**

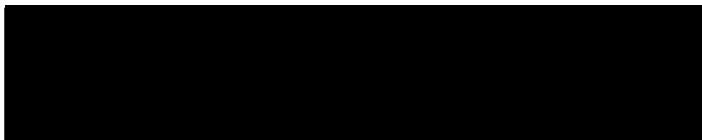
**("the Land")**

**ALL THAT** piece or parcel of land known as land at The Packhorse Inn and land west of the Packhorse Inn, Fore Street, St Blazey, Cornwall, PL24 2NH **ALL OF WHICH** said land is shown for identification purposes only edged with a red line on the Plan

## PLAN



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Wayne Brown



MLRutt

**THE SECOND SCHEDULE**  
**("the Obligations and Restrictions")**

**1 NOTICE OF COMMENCEMENT**

- 1.1 No Development shall commence until the Owners shall serve notice on the Council clearly addressed and marked for the attention of the Head of Planning and Regeneration for the Council confirming the date for the Commencement of Development

**OWNERS' COVENANTS**

2. The Owners covenants to the Council as follows:

**Off Site Public Open Space Contribution**

- 2.1 To pay the Off Site Public Open Space Contribution in its entirety increased by the Percentage to the Council on completion of this Deed.

SIGNED as a DEED by )

WAYNE RICHARD EDUARDO BROWN ) Signature

In the presence of:

Witness signature:-

Print name:- NS Triswell

Witness address:- 22 Broad st

Sedford, East Sussex

BN25 1ND

Witness Occupation: Director



EXECUTED as a DEED by )

PRIDEAUX ASSET LIMITED )

acting by a director

MLRutt

Signature of Director

In the presence of

Witness signature

Print name:-

DOROTHY MAY SPOONER

Witness address:-

4 Shepherds Fold,

Holmer Green, HIGH WYCOMBE,

Buckinghamshire, HP15 6XZ

Witness Occupation:-

Retired Secretary