

Dated

'13 FEBRUARY

~~2018~~ 2020.

**Great Yarmouth Borough Council**

-and-

**DPKBV Limited**

- and -

**DPK Limited**

-and-

**Cranlee Properties Limited**

-and-

**Tesco Stores Limited**

-and-

**Town Close Limited**

-and-

**Lloyds Bank Plc**

-and-

**United National Bank Limited**

-and-

**Norfolk County Council**

**DEED OF PLANNING OBLIGATION  
UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING  
ACT 1990**

relating to land at off Mitchell Drive and Jones Way  
Great Yarmouth

THIS DEED is dated

13 FEBRUARY

2020  
~~2019~~

**PARTIES:**

- (1) **Great Yarmouth Borough Council** of Town Hall, Hall Plain, Great Yarmouth, NR30 2QF (referred to as "the Council")
- (2) **DPKBV Limited** (Co. Regn. No. 04830696) whose registered office is at Suite 4 Cranbrook House, Cranbrook Road, Ilford, Essex IG1 4PG (referred to as "the Applicant")
- (3) **DPK Limited** (Co. Regn. No. 3992949) Suite 4 Cranbrook House, 61 Cranbrook Road, Ilford, Essex IG1 4PG (referred to where appropriate as "the First Leasehold Owner" and "the Second Leasehold Owner")
- (4) **Cranlee Properties Limited** (Co. Regn. No. 05380432) of 138a Station Road, Edgware, London, HA8 7AA (referred to as "the First Owner")
- (5) **Tesco Stores Limited** (Co. Regn. No. 00519500 of Tesco House, Tesco House, Shire Park, Kestrel Way, Welwyn Garden City United Kingdom AL7 1GA (referred to as "the Second Owner")
- (6) **Town Close Limited** (Co. Regn. No. 00860132) of 12 Helmet Row, London EC1V 3QJ (referred to as "the Third Owner")
- (7) **Lloyds Bank Plc** of Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5HZ ("the Mortgagee of the Third Owner")
- (8) **United National Bank Limited** (Co. Regn. No. 4146820) of 2 Brook Street, London, W1S 1BQ (referred to as "the Mortgagee of the First Owner")
- (9) **Norfolk County Council** of County Hall, Martineau Lane, Norfolk NR1 2DH (referred to as "the County Council")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is a local planning authority for the area within which the Application Site is located.
- (B) The Applicant has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed.
- (C) The Second Owner owns the freehold of the Application Site.

- (D) The First Owner owns the freehold of the Great Yarmouth KFC Site.
- (E) The Third Owner owns the freehold and the First Leasehold Owner is the leaseholder of the Gorleston KFC Site.
- (F) The Mortgagee of the Third Owner has a Charge over the Gorleston KFC Site.
- (G) The Mortgagee of the First Owner has a Charge over the freehold interest in Great Yarmouth KFC Site which is registered at HM Land Registry with freehold title absolute under title number NK251239
- (H) The Parties have agreed to enter into this Deed in order to keep open the existing businesses at the date of this agreement at the Gorleston KFC Site and the Great Yarmouth KFC Site.
- (I) The County Council are the Highway Authority for the area within which the Application Site is located.

## 1. DEFINITIONS

In this Deed the following expressions have the following meanings:

<b>Act</b>	<b>The Town and Country Planning Act 1990</b>
<b>Application Site</b>	<b>The land off Mitchell Drive and Jones Way Plot 3 and being part of the freehold land registered at H M Land Registry with freehold title number NK257181 and shown edged red on the Plan</b>
<b>Commencement</b>	<b>The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except operations consisting of:</b> <b>site clearance</b> <b>demolition</b> <b>archaeological investigations</b> <b>ground surveys</b> <b>removal of contamination</b> <b>erection of temporary fences</b> <b>and 'Commence' and 'Commenced' will be construed accordingly</b>

<b>Development</b>	<b>The Development of the Application Site in accordance with the Permission</b>
<b>Gorleston KFC Site</b>	<b>The land known as 113A High Street, Gorleston as the same is registered at H M Land Registry under title number NK236500 with leasehold title absolute and shown edged red on the filed plan of that title.</b>
<b>Great Yarmouth KFC Site</b>	<b>The land known as 114A Regent Road, Great Yarmouth as the same is registered at H M Land Registry under title number NK251595 with leasehold title absolute and shown edged red on the filed plan of that title.</b>
<b>Leaseholders Nominated Officer</b>	<b>Together the First and Second Leasehold Owners The senior officer of the Council responsible for development management or other officer of the Council notified to the Owner</b>
<b>Occupation</b>	<b>Occupation of the Application Site, or any part of it, for any purpose authorised by the Permission, but excluding occupation for the purposes of: construction Internal and external refurbishment decoration fitting-out marketing and 'Occupy' and 'Occupied' will be construed accordingly</b>
<b>Owners</b>	<b>Together the First Owner, Second Owner and Third Owner</b>

<b>Permission</b>	<b>The planning permission to be granted by the Council for erection of a single storey building for mixed use as a restaurant and hot food takeaway and allocated reference number 06/18/0173/F or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development</b>
<b>Plan</b>	<b>The plan attached to this Deed</b>
<b>Sites</b>	<b>Together the Application Site, Great Yarmouth KFC Site and the Gorleston KFC Site</b>
<b>Trigger</b>	<b>means the Commencement date and any trigger or threshold in this Deed linked to the taking of specified steps, payment of money, or linked to the prohibition of a specified action</b>

**2. LEGAL BASIS**

- 2.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council and County Council**
- 2.2 Covenants given by more than one party can be enforced against them individually or jointly**
- 2.3 A reference to an act of Parliament includes any later modification or re-enactment, including any statutory instruments made under that act, and reference to a gender or person includes all genders or classes of person**

**2.4 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done**

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

### **3. COVENANTS**

**3.1 The Owners and Leaseholders severally covenant with the Council and County Council for themselves and their successors in title to observe and perform their respective obligations and stipulations on their respective parts contained in this Deed**

**3.2 The Council and County Council covenant with the Owners and Leaseholders to comply with their respective obligations contained in this Deed**

### **4. OTHER PROVISIONS**

**4.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Sites (unless the breach occurred before he disposed of his interest)**

**4.2 The Second Owner confirms that they are the freehold owner of the Application Site with full power to enter into this Deed and that there is no person or body other than the Applicant with an interest in the Application Site whose consent is necessary to make this Deed binding on all interests in the Application Site**

**4.3 The First Owner confirms that they are the freehold owner of the Great Yarmouth KFC Site with full power to enter into this Deed and that there is no person or body other than the Second Leasehold Owner and Mortgagee of the First Owner with an interest in the Great Yarmouth KFC Site whose consent is necessary to make this Deed binding on all interests in the Great Yarmouth Site**

- 4.4 The Third Owner confirms that they are the freehold owner of the Gorleston KFC Site with full power to enter into this Deed and that there is no person or body other than the Third Owner and Mortgagee of the Third Owner with an interest in the Gorleston KFC Site whose consent is necessary to make this Deed binding on all interests in the Gorleston KFC Site**
- 4.5 This Deed will not bind anyone who acquires an interest in part of the Application Site for the purpose of the supply of utility services**
- 4.6 On completion the Applicant will pay the Council's and County Council's reasonable legal costs in connection with this Deed**
- 4.7 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999**
- 4.8 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions**
- 4.9 No waiver, express or implied, by the Council constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed**
- 4.10 Upon the satisfaction of the terms of this Deed the Council shall at the request of any of the Parties procure that all entries in the register of local land charges relating to them shall be removed or marked as discharged as soon as is reasonably practicable**
- 4.11 The Council agrees that (subject to it first being paid a reasonable administration fee not exceeding £50) it will confirm in writing the extent of the obligations which the Parties have discharged at the date of the request as soon as is reasonably practicable after receipt of a written request from any of the Parties or a person on its behalf**

## **5. DISPUTES**

- 5.1** If any dispute is not resolved between the Parties, any of the Parties may refer it for determination by an expert. The expert will be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's decision shall be final and binding
- 5.2** Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **6. INTEREST AND VAT**

- 6.1** If any payment due to the Council is paid late interest will be added from the date payment is due to the date of payment at the rate of 4% above the base lending rate of the Bank of England from time to time
- 6.2** All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid

## **7. NOTIFICATIONS**

- 7.1** Any notice or written communication given under this Deed to any party other than the Second Owner is validly given if hand delivered or sent by recorded delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been received
- 7.2** A copy of any notice served on the Second Owner shall also be sent at the same time and by the same mode of service to Highwoods (2<sup>nd</sup> Floor) Shire Park, Welwyn Garden City, Hertfordshire AL7 1GA marked for the attention of the Property Director or to such other alternative address or alternative person as the Second Owner may notify to the Parties in writing from time to time.



- 7.3 A copy of any notice served by any of the Parties on the Second Owner shall also be sent to Bryan Cave Leighton Paisner LLP, Adelaide House, London Bridge, London EC4R 9HA at the same time and by the same mode of service as it is served on the Second Owner.
- 7.4 Any notice or written communication given under this Deed to the Mortgagee of the First Owner shall be sent to the address given for them at the head of the Deed marked for the attention of "the Directors" or to such other address notified to the other parties from time to time.
- 7.5 A notice to be given by any of the parties under this Deed may be given by the relevant party's solicitors
- 7.6 The Owners will notify the Nominated Officer in writing of the relevant
- 7.6.1 anticipated Triggers seven days in advance of each anticipated date
  - 7.6.2 actual Triggers within seven days of each actual date
- 7.7 If any of the Owners dispose of their interest in all or part of the Application Site, Gorleston KFC Site, or Great Yarmouth KFC Site, they will notify the Nominated Officer within 10 working days of the name and address of the new owner and sufficient details to identify the Application Site, Gorleston KFC Site or Great Yarmouth KFC Site or part of the Application Site, Gorleston KFC Site or Great Yarmouth KFC Site.

## **8. MORTGAGEE CONSENT**

The Mortgagee of the First Owner and the Mortgagee of the Third Owner consent to this Deed so that their respective interests in the Great Yarmouth KFC Site and the Gorleston KFC Site are bound by the obligations contained in this Deed and agree that their respective securities over the Great Yarmouth KFC Site and Gorleston KFC Site take effect subject to the provisions of this Deed PROVIDED THAT neither Mortgagee shall be liable for any breach of the obligations in this Deed unless such breach is committed and continuing at a

time where the Mortgagee of the First Owner and/or the Mortgagee of the Third Owner are in possession of the Great Yarmouth KFC Site or the Gorleston KFC Site as the case may be (for the avoidance of doubt any person acquiring title to all or part of the Great Yarmouth KFC Site or the Gorleston KFC Site as a result of the Mortgagee of the First Owner or the Mortgagee of the Third Owner (as the case may be) enforcing its security will be bound by the terms of this Deed.)

#### **Schedule 1**

#### **The Plan**

Planning Application Ref 06/180173/F



60M<sup>2</sup> SEPARATE TERRACE + CARPORT 24M<sup>2</sup>  
CARPORT AREA FOR 10 VEHICLES NO

12529

## Schedule 2

In this Schedule (and elsewhere in this Deed where the context permits) the following words and phrases shall have the following meaning:

<b>"Private Agreement"</b>	Separate private agreements between the First, Owner, the Second Leasehold Owner, Applicant and KFC and the Third Owner, the First Leasehold Owner, Applicant and KFC to agree a scheme to retain the trading of the Gorleston KFC Site and the Great Yarmouth KFC Site as fast food outlets selling KFC branded products.
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1. The Applicant the Third Owner and the First Leasehold Owner covenant with the Council:
  - 1.1 Prior to the Application Site opening for trade to enter into a Private Agreement between the Applicant, the Third Owner, the First Leasehold Owner and KFC to complete the Development within 12 months of the grant of the Permission and thereafter forthwith commence to trade from the Application Site and agree a scheme for keeping the Gorleston KFC Site open from the date that the Application Site opens for trade for a minimum period of 5 years as a fast food outlet selling KFC branded products.
  - 1.2 Prior to the Application Site opening for trade to enter into a Private Agreement between the Applicant, the First Owner, the Second Leasehold Owner and KFC to complete the Development within 12 months of the grant of the Permission and thereafter forthwith commence to trade from the Application Site and agree a scheme for keeping the Great Yarmouth KFC open from the date the Application Site opens for trade for a minimum period of 5 years as a fast food outlet selling KFC branded products.

- 1.3 In the event that either the Gorleston KFC Site or Great Yarmouth KFC Site cease trading as fast food outlets selling KFC branded products within 5 years of the opening of trade of the Application Site and the Private Agreement does not prevent closure, the Applicant agrees to stop trading at the Application Site within 6 months of either the Gorleston KFC Site or Great Yarmouth KFC Site closing unless such site or an alternative site within Gorleston or Great Yarmouth (or as otherwise agreed with the Council) commences to trade again as a fast food outlet selling KFC branded products within the period of 6 months**

**Schedule 3**  
**Car Park Monitoring**

<b>Car Park Monitoring Contribution</b>	<b>Means the sum of £5000 or such other sum agreed by the County Index Linked towards the monitoring of the Application Site by the County as part of routine maintenance inspections and if required the implementation of a Traffic Regulation Order following the results of the Monitoring Period</b>
<b>Monitoring Period</b>	<b>Means the monitoring of the use of the car park within the Application Site between the period of 6 and 12 months (or as otherwise agreed by the County) following the first use of the Application Site as a fast food outlet</b>
<b>Traffic Regulation Order</b>	<b>means an order under the Road Traffic Regulations Act 1984 or any amendment to an existing order required in connection with the Application Site</b>

- 1. The Applicant covenants with the County Council as follows:**
  - 1.1 To pay the Car Park Monitoring Contribution to the County Council prior to the Application Site opening for trade as a fast food outlet.**
  - 1.2 Following the completion of the Monitoring Period if necessary to pay any additional sum to the County Council to cover the costs associated with the making and implementing any Traffic Regulation Order**
- 2. The County Council covenants with the Applicant as follows:**
  - 2.1 To monitor the use of the car park during the Monitoring Period**
  - 2.2 Following the completion of the Monitoring Period to provide to the Applicant the monitoring results and at the cost of the Applicant to implement a Traffic Regulation Order (if necessary) as soon as reasonably practicable.**

3. To deposit the Car Park Monitoring Scheme Contribution in an interest-bearing account and apply the capital and any interest accrued towards the purpose for which it was paid ("the Approved Purpose")
- 3.1 That if any money paid to it under the provisions of this Schedule has not been used or committed for the Approved Purpose it will be repaid to the Applicant together with any interest accrued

IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written.

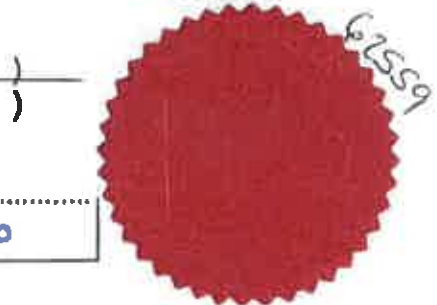
THE COMMON SEAL OF  
Great Yarmouth Borough Council  
was affixed in the presence of:



Attesting Officer:

THE COMMON SEAL OF  
Norfolk County Council  
was affixed in the presence of:

Authorised to sign on behalf of  
the Chief Legal Officer  
Norfolk County Council



Attesting Officer:

Date: 5 Feb 2020

EXECUTED AS A DEED by DPKBV Limited acting as  
in the presence of:

~~Director:~~

~~Director/Secretary:~~

3<sup>rd</sup> Floor, Elizabeth House  
54-58 High Street  
Edgware  
Middx HA8 7EJ  
SOMERSET

EXECUTED AS A DEED by DPK Limited acting as  
in the presence of:

~~Director:~~

~~Director/Secretary:~~

3<sup>rd</sup> Floor, Elizabeth House  
54-58 High Street  
Edgware  
Middx HA8 7EJ  
SOMERSET

14  
29/1/20  
17875

acting by a director

EXECUTED AS A DEED by Cranlee Properties Limited )  
In the presence of: )

~~Director:~~

~~Director/Secretary:~~

3<sup>rd</sup> Floor, Elizabeth House  
54-58 High Street  
Edgware  
Middx HA8 7EJ

EXECUTED AS A DEED by Tesco Stores Limited  
In the presence of:

~~Director:~~ Signature of witness.

~~Director/Secretary:~~ Address: TESCO STORES LTD, HIGHWOODS BLDG, STREE PARK,  
WELWYN GARDEN CITY, HERTS, AL7 1QA.  
Occupation: DEVELOPMENT SURVEYOR

EXECUTED AS A DEED by Town Close Limited )  
In the presence of: )

Director:

Director/Secretary

EXECUTED AS A DEED by Lloyds Bank PLC  
In the presence of:

Director:

Director/Secretary:

EXECUTED AS A DEED )  
BY CASE HANDLER )  
as authorized signatory for )  
Lloyds Bank plc )  
for this purpose of information of addressee )  
Per Pro )  
Llc )  
Webster Rd, Wokingham WY9 3RZ

EXECUTED AS A DEED by United National Bank Limited )  
in the presence of: )

Director:

Director/Secretary:

*R. Smith*

Chief Executive Officer  
United National Bank Limited

Lending Operations Manager  
90 2 Brook Street, London  
W1S 1BQ.