HINCKLEY & BOSWORTH BOROUGH COUNCIL

MEMORANDUM

FROM: *MIKE RICE*

TO: *JAMES HICKS PLANNING*

C.C.

SUBJECT: *CASTLEMEAD - UNILATERAL UNDERTAKING*

DATE: *9 SEPTEMBER 2010*

YOUR REF: ***OUR REF:*** *MR/VT*

I enclose a copy for your records.

Mike

DEVELOPMENT SERVICES
10 SEP 2010
RECEIVED

DATE 2ND AUGUST 2010

UNDERTAKING

by

ASSURA MEDICAL CENTRES LIMITED

- and –

THE GENERAL PRACTICE FINANCE CORPORATION

to

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

Pursuant to Section 106 Town and Country Planning Act 1990

Relating to the extensions and alterations to create pharmacy and consulting rooms at Castle Mead Medical Centre, Hill Street, Hinckley

Hinckley and Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
Leicestershire LE10 1BZ

THIS UNDERTAKING is given the 2ND day of AUGUST 2010 by **Assura Medical Centres Limited** (co reg no 673480) whose registered office is situate at 3300 Daresbury Park, Warrington, Cheshire, WA4 4HS ('the Owner') and **The General Practice Finance Corporation Limited** (co reg no 2334210) (whose registered office is situate at Sentinel House, 37 Surrey Street, Norwich NR1 3UY ('the Mortgagee')

RECITALS

1. The Owner is the registered proprietor with title absolute of the Application Site
2. Hinckley & Bosworth Borough Council of Council Offices, Argents Mead, Hinckley ('the Council') is the Local Planning Authority for the area in which the Application Site is situated
3. Assura Properties Limited has submitted the Application to the Council
4. The Mortgagee has a charge over the Application Site pursuant to a Charge dated 23 September 2009
5. The Owner has agreed to give an undertaking to the Council in relation to the Planning Permission in the form set out in this Deed

NOW THIS DEED WITNESSES AS FOLLOWS:-

1. DEFINITIONS

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

'Act' The Town and Country Planning Act 1990 (as amended)

'Application'	the application for full planning permission submitted to the Council for the Development and allocated reference number 10/00386/FUL
'Application Site'	the land more particularly described in the First Schedule and shown on the Plan
'Commencement of Development'	shall mean the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination, or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence Development' or 'Commenced' shall mutatis mutandis be construed accordingly
'Development'	the Development of the Application Site comprising single storey extensions to existing medical centre to create new dispensing pharmacy and replacement consulting rooms pursuant to the Planning Permission
'Plan'	the Plan attached to this Deed

HILL STREET HINCKLEY LE10 1DS
CASTLE MEAD MEDICAL CENTRE
PHARMACY
Location Plan
DBL308
00
B
A3
1:1250 @ A3
Oct 10
JH
Metres
0
20
40
60
80
100
Reference number [03259] [03259/00/B]
Based upon Ordnance Survey 1:1250 Digital Data
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HILL STREET
THORNYCROFT ROAD
ORCHARD STREET
MOUNT ROAD
CASTLE MEAD
Hinckley Hospital
Health Centre
Comfort Quarters
Queen's Head
Bowling Green
Car Park

'Planning Permission'	the planning permission to be granted pursuant to the Application for the Development subject to conditions
'Town Centre Infrastructure Contribution"	the sum of six thousand three hundred and seventy five pounds (£6,375.00) as a contribution towards transport infrastructure improvement in Hinckley town centre in accordance with the Hinckley Town Centre Strategic Development Contributions Supplementary Planning Document arising out of the Development

2. **CONSTRUCTION OF THIS DEED**

2.1 Words importing the masculine gender shall be deemed to include the feminine and the neuter and the singular the plural and vice versa and words denoting natural persons shall include corporations and vice versa unless the contrary is expressly provided or the context otherwise requires

2.2 Obligations and liabilities of a party comprising more than one person are obligations and liabilities of such persons jointly and severally provided that no person shall be liable in respect of any breach (and for this purpose breach shall include the failure to perform any positive obligation) other than in respect of land in his beneficial ownership AND further no person shall be liable for any breach of covenant first occurring after he has disposed of such interest in such land or the part thereof in respect of which such breach occurs

2.3 Any reference to a numbered clause or sub-clause or to a Schedule is (except where indicated to the contrary) a reference to the corresponding clause or sub-clause or a Schedule to this Deed

2.4 Any reference to a statute or any section thereof includes any amendment modification consolidation or re-enactment thereof and any statutory instrument direction or regulation made thereunder for the time being in force

2.5 The clause headings in this Deed are for ease of reference only and shall not affect the construction thereof

2.6 The expressions 'the Council' 'the Owner' and 'the Mortgagee' shall where the context so admits include their respective successors and assigns

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act

3.2 The undertakings given by the Owner bind (so far as provided by this Deed) its successors in title

4. CONDITIONALITY

4.1 This Deed is conditional upon;

(i) the grant of Planning Permission; and

(ii) the Commencement of Development

save for the provisions of Clause 8.2, 8.8 and 9 which shall come into effect immediately upon the completion of this Deed

5. **PLANNING OBLIGATION**

5.1 Each undertaking given respectively by the Owner herein is a planning obligation for the purposes of Section 106 of the Act and is enforceable by the Council as the local planning authority

6. **THE OWNER'S COVENANTS**

6.1 The Owner covenants with the Council to comply with the covenants contained in the Second Schedule

6.2 No person shall be bound by any obligations, rights and duties contained in this Deed and/or be liable for any breach of a covenant and/or obligation contained in this Deed after they shall have parted with all interest in the Application Site or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest

7. **MORTGAGEES' CONSENT**

7.1 The Mortgagee hereby consents to the completion of this Deed and acknowledges the undertakings on the Application Site and the covenants by the Owner and in the event that the Mortgagee takes possession of the Application Site or any part of it and/or exercising its power of sale then the Mortgagee and its successors in title will observe and perform and be bound by the terms and conditions of this Undertaking so far as the same remain to be observed and performed and so far as such undertakings and covenants may apply to the Mortgagee PROVIDED THAT the Mortgagee shall have no liability under this Deed unless it takes possession of the Application Site

8. **GENERAL**

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

8.2 Any dispute under or arising out of the operation of this Deed may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force

8.3 Any notice agreement consent or approval to be given under the terms of this Deed shall be in writing and sent by ordinary post and:-

8.3.1 in the case of the Council be addressed to the Planning Office Council Offices Argents Mead Hinckley Leicestershire LE10 1BZ; and

8.3.2 in the case of the Owner shall be sent by ordinary post to its registered office or such other address as it shall provide in this regard

8.4 If the Planning Permission expires, is revoked, quashed or otherwise ceases to exist before the Commencement of Development this Deed will cease to have effect and as from such time there shall be no further obligations on any party in relation to any matter that has occurred or may arise under this Deed

8.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this Deed

8.6 The Owner may at any time after the obligations of the Owner under this Deed have been fulfilled write to the Council requesting written confirmation thereof

8.7 No statutory undertaker or utility company shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking in respect of any site

used only as an electricity substation, gas governor or pumping station or for such other purpose connected with their functions

8.8 The Owner shall pay the Council's reasonable legal costs in respect of the preparation and completion of this Deed in the sum of £500

9 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

THE FIRST SCHEDULE

Land known as Castle Mead Medical Centre, Hill Street, Hinckley registered with title number LT243227 and shown for identification only edged red on the Plan

SECOND SCHEDULE

The Owner's undertakings to the Council

The Owner undertakes to the Council

1. To notify the Council within 14 days of the Commencement of Development

2.1 That no Development shall Commence until the greater of the Town Centre Infrastructure Contribution or the Town Centre Infrastructure Contribution adjusted in accordance with the Third Schedule has been paid to the Council

THIRD SCHEDULE

1. In this Schedule:

"Index" means

(i) the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors

('RICS') or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined by an Arbitrator appointed by the President of the RICS for the purposes of this Agreement in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs.

'Base Index Date' means the date of the grant of the Planning Permission

'Base Index Figure' means the figure published in respect of the Index immediately prior to the Base Index Date

'Final Index Figure' means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the date upon which the Town Centre Infrastructure Contribution is paid.

2. The Town Centre Infrastructure Contribution shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where: "A" equals the relevant Contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure

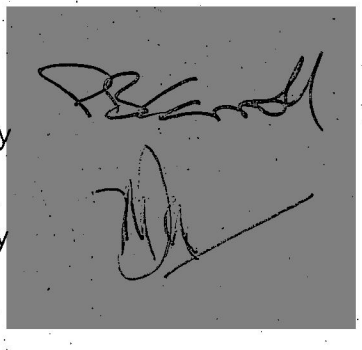
which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made

4. If any substitution for the said All Items Retail Prices Index or the BICS, or any index previously substituted therefore shall occur the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the All Items Retail Prices Index or the BCIS or any index previously substituted therefore on the other hand

EXECUTED AS A DEED BY
Assura Medical Centres Limited
in the presence of:-

Authorised Signatory

Authorised Signatory



EXECUTED as a DEED (but not delivered until the date inserted above) by [redacted]

AS ATTORNEY FOR)
THE GENERAL PRACTICE)
FINANCE CORPORATION LIMITED)
in the presence of)

[redacted]

Signature of witness
Name of witness
Address of witness

Barbara Meeks
B Meeks
Sentinel House,
37 Surrey Street
Norwich, NR1 3UY

Occupation of witness

Administrative Assistant

UKCF110/665