

Dated

15<sup>th</sup> February

2022

- (1) **MODA INTERNATIONAL BRANDS LIMITED**  
(2) **SANDY KAY LIMITED**

In favour of

- (3) **CHARNWOOD BOROUGH COUNCIL**

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**UNILATERAL UNDERTAKING**

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under section 106 Town and Country Planning  
Act 1990 relating to  
Land at Farriers Close, Wymeswold



Bird Wilford & Sale  
Solicitors  
20 Church Gate  
Loughborough  
LE11 1UD  
DX 19607 Loughborough  
Tel: 01509 232611  
Ref: RDFR/LCL

**THIS DEED** is made on the 15<sup>th</sup> day of February 2022

**BY:**

**(1)MODA INTERNATIONAL BRANDS LIMITED** (Incorporated in the British Virgin Islands with BVI Company Number 1505163) of Vistra Corporate Services Centre, Wickhams Cay II, Road Town Tortola, VG1110, British Virgin Islands and care of 20 Church Gate, Loughborough LE11 1UD. ("**the Landowner**")

**(2)SANDY KAY LIMITED** (Incorporated in the British Virgin Islands with BVI Company Number 1961452) of Vistra Corporate Services Centre, Wickhams Cay II, Road Town Tortola, VG1110, British Virgin Islands and care of 20 Church Gate, Loughborough LE11 1UD ("**the Chargee**")

**TO:**

**(3)CHARNWOOD BOROUGH COUNCIL** of the Council Offices, Southfield Road, Loughborough LE11 2TX ("**the Council**")

#### **BACKGROUND**

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and can enforce the obligations contained in this Deed.
- (B) The Landowner is the freehold owner of the whole of the Site which is registered at HM Land Registry under title number LT341084 which is free from encumbrances that would prevent the Landowner entering into this Deed.
- (C) The Chargee has a registered charge over the site dated 18 October 2019 listed at entries numbered 7 and 8 of the charges register of title LT341084 and is entering into this Deed to acknowledge that its interest in the Site shall be bound by the terms of this Deed
- (D) Pursuant to the Planning Application the Landowner has applied to the Council for planning permission for the Development.
- (E) The Landowner enters into this Deed with the intention of securing an obligation for a contribution towards a Biodiversity Offsetting Scheme which will deliver biodiversity enhancements.
- (F) The Landowner enters into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Landowner and its successors in title.

## **OPERATIVE PROVISIONS**

### **1. INTERPRETATION**

1.1 In this Deed, the following words and expressions have the following meanings:

**"1990 Act"** the Town and Country Planning Act 1990

**"Biodiversity Contribution"** **Offsetting** means the sum of £15,971.00 (Index Linked) payable by the Landowner to the Council towards habitat creation and enhancement within the Borough of Charnwood with priority given to grassland enhancement within the Parish of Wymeswold for the enhancement and security of long-term biodiversity.

**"Commence"** means to initiate the Development by carrying out a material operation as defined in section 56(4) of the 1990 Act which for the purpose of this Deed shall exclude operations consisting of:

- a) demolition works;
- b) investigations for the purpose of assessing ground conditions;
- c) diversion and laying of Utilities;
- d) creation of temporary means of access for construction works;
- e) archaeological investigation;
- f) erection of any temporary fences and hoardings on or around the Site;
- g) erection of a site office; and
- h) creation of a site compound,

and the terms **"Commencement"** and **"Commenced"** and **"Commence Development"** and **"Commencement Date"** are to be construed accordingly

**"Development"** the development of the Site for to the erection of 4 detached dwelling houses and associated parking and landscaping pursuant

	to the Planning Permission
<b>"Dwelling"</b>	a house comprised in the Development (and "Dwellings" shall be interpreted accordingly)
<b>"Index"</b>	means the Retail Prices Index (or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation as may be agreed in writing between the Landowner and the Council
<b>"Indexation"</b>	means adjusted in accordance with Clause 11.1
<b>"Interest"</b>	means interest at 4% above the base lending rate of Lloyds Bank plc from time to time
<b>"Occupation" and "Occupied"</b>	occupation for the purposes 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 operating at the Site
<b>"Plan"</b>	the plan attached to this Deed
<b>"Planning Permission"</b>	the planning permission which may be granted for the Development pursuant to the Planning Application
<b>"Planning Application"</b>	an application for full planning permission for the carrying out of the Development made by the Landowner carrying the reference P/21/1571/2
<b>"Site"</b>	the freehold property known as land at on the West side of London Lane, Wymeswold, Leicestershire and shown for identification

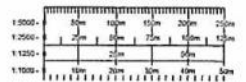


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Autumn  
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A3

FOR GUIDANCE ONLY



**brownhill hayward brown**  
chartered architects

3418 - OS  
DATE: April 21  
SCALE: 1:1250 @ A3

**INFORMATION**

DATE: 21/04/21  
BY: [Signature]  
CHECKED: [Signature]  
APPROVED: [Signature]

The accuracy of this drawing is guaranteed by the architect and is not to be used for any other purpose without the written consent of the architect.

**bhb**

edged red on the Plan

**"Working Day(s)"**

Any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a Statutory Bank Holiday

1.2 In this Deed:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
  - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed; and
  - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 "including" means "including, without limitation";
- 1.2.6 any covenant by the Landowner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.7 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.

2. **EFFECT OF THIS DEED**

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.

- 2.2 Subject to **Clause 2.5**, the obligations, covenants and undertakings on the part of the Landowner are entered into with the intent that they are enforceable not only against the Landowner but also against any successors in title or assigns of the Landowner and any person claiming through or under the Landowner an interest or estate in the Site or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it.
- 2.3 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 This Deed is capable of and may be registered as a local land charge by the Council.
- 2.5 The obligations in this Deed will not be enforceable against:
- 2.5.1 the buyers of an individual Dwelling erected on the Site pursuant to the Planning Permission; or
  - 2.5.2 a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Landowner to that statutory undertaker.
- 2.6 Nothing in this Deed prohibits or limits 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 after the date of this Deed, whether or not pursuant to an appeal.
- 2.7 No waiver (whether express or implied) by the Council of any breach or default in performing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

### 3. **CONDITIONALITY**

- 3.1 Subject to **Clause 3.2** this Deed is conditional upon and will not take effect until the Planning Permission has been granted.
- 3.2 **Clauses 3 and 7** come into effect on the date of this Deed.
- 3.3 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the part of the Site



in respect of which such breach occurs, but they will remain liable for any breaches of this Deed occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 3.3.

#### **4. OBLIGATIONS OF THE LANDOWNER**

- 4.1 The Landowner covenants with the Council to pay the Biodiversity Offsetting Contribution to the Council prior to Commencement of the Development and not to Commence the Development until the Biodiversity Offsetting Contribution has been paid to the Council in full including any sum due for Indexation or Interest.
- 4.2 The Landowner covenants with the Council to comply with the obligations set out in in this Deed in relation to the Development.
- 4.3 The Landowner covenants with the Council to give the Council written notice within 20 Working Days of any change in ownership of any of its interests in the Site occurring before all of the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan save that the sale of individual Dwellings shall not be subject to such notification.

#### **5 TERMINATION OF THIS DEED**

- 5.1** This Deed will come to an end if:
  - 5.1.1 subject to **Clause 5.2**, the Planning Permission is quashed and refused upon redetermination, revoked or otherwise withdrawn before the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable; or
  - 5.1.2 the Planning Permission expires before the Commencement Date without having been implemented
- 5.2** **Clause 5.1.1** will not apply in respect of any minor modifications to the Planning Permission or the Development agreed from time to time between the Council and the Landowner prior to the Commencement Date.
- 5.3 Where the Deed comes to an end under Clause 5.1 the Landowner will request that:



- 5.3.1 the Council vacates or cancels the entry made in the Local Land Charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affects the Site; and
- 5.3.2 any monies paid under this Deed to the Council, with the exception of fees paid under Clause 7, that have not yet been committed for expenditure are returned to the party that made the payment.

## **6. NOTICES**

- 6.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 6.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council shall be addressed to the Head of Planning and Regeneration
- 6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
  - 6.3.1 if delivered by hand, at the time of delivery;
  - 6.3.2 if sent by post, on the second Working Day after posting; or
  - 6.3.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 6.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## **7 COSTS OF THIS DEED**

- 7.1 Upon execution of this Deed the Landowner will pay to the Council their reasonable and proper legal costs of £450.00 in connection with the preparation and negotiation of this Deed.

## **8 JURISDICTION**

This Deed is to be governed by and interpreted in accordance with the laws of England.

## **9 RIGHTS OF THIRD PARTIES**

The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed.

## **10 VALUE ADDED TAX**

- 10.1 Each amount stated to be payable by the Landowner to another party under or pursuant to this Deed is exclusive of VAT (if any).
- 10.2 If any VAT is at any time chargeable on any supply made by the Council under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

## **11 INDEXATION AND LATE PAYMENT**

- 11.1 Any sum to be paid to the Council under this Deed will be adjusted by an amount equivalent to the change in the Index from the date of this Deed to the date on which such sum is paid to be calculated as follows:

$$A \times \frac{B}{C} = D$$

where:

- A = the relevant sum as specified in this Deed in pounds sterling
- B = the Index at the date the relevant sum is paid
- C = the Index at the date of this Deed
- D = the resultant sum in pounds sterling payable under this Deed

and, for the avoidance of doubt, if D is less than A, then the net movement in the Index over the relevant period shall be deemed to be nil

- 11.2 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

## **12 EXECUTION**

The Landowner and Chargee have executed as a deed and it is delivered on the date set out above.

EXECUTED as a Deed by  
**MODA INTERNATIONAL BRANDS  
LIMITED** a company incorporated  
in the British Virgin Islands acting by  
**GRAHAM HEDLEY COOK** who, in  
Accordance with the laws of that  
territory, is acting under the  
authority of the company

) Signature in the name of  
) the Company  
) Moda International  
) Brands Limited  
)   
) .....  
) Graham Hedley Cook  
) Authorised Signatory

EXECUTED as a Deed by  
**SANDY KAY LIMITED** a company  
incorporated in the British  
Virgin Islands acting by **GRAHAM  
HEDLEY COOK** who, in accordance  
with the laws of that territory, is  
acting under the authority of the  
company

) Signature in the name  
) of the Company  
) SANDY KAY LIMITED  
)   
) .....  
) Graham Hedley Cook  
) Authorised Signatory