Dated 2021

HERBERT GEORGE HEAVER

COUNTRYSIDE PROPERTIES (UK) LTD

CHICHESTER DISTRICT COUNCIL

agreement

relating to the Chichester District Council (Tangmere) Compulsory Purchase Order 2020

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**This AGREEMENT** is made on 2021

Between

1. **HERBERT GEORGE HEAVER** of West Stoke Farm, West Stoke, Chichester, PO18 9BQ (**"Heaver"**) which expression shall include successors in title; and
2. **COUNTRYSIDE PROPERTIES (UK) LTD** (Company No. 00614864) whose registered office is at Countryside House, The Drive, Brentwood, Essex CM13 3AT (**"Countryside"**); and
3. **CHICHESTER DISTRICT COUNCIL** of East Pallant House, Chichester, West Sussex PO19 1TY (the **"Council"**)

BACKGROUND

1. On 28 October 2020, the Council made the Chichester District Council (Tangmere) Compulsory Purchase Order 2020 pursuant to section 226(1)(a) of the Town and Country Planning Act 1990.
2. The Compulsory Purchase Order was subsequently submitted for confirmation to the Secretary of State for Housing, Communities and Local Government in November 2020, and as at the date of this Agreement a decision is awaited.
3. If confirmed, the Compulsory Purchase Order will authorise the Council to compulsorily acquire 18 plots of land (as more particularly described in the Compulsory Purchase Order and being the **Order Land**), in order to facilitate the development of the Tangmere Strategic Development Location (**"Scheme"**).
4. A development agreement was entered into between the Council and Countryside on 5 February 2019 and a supplemental agreement varying the development was subsequently entered into on 3 April 2020. Under the terms of those agreements the Council will transfer any part or parts of the Order Land that vests in the Council pursuant to the Compulsory Purchase Order to Countryside to facilitate the delivery of the Scheme.
5. Heaver has the benefit of the Existing Rights over part of the Order Land.
6. The parties have agreed to enter into this Agreement in order to ensure that the Existing Rights will not be prejudiced in the event the Compulsory Purchase Order is confirmed and part or all of the Order Land is compulsorily acquired.

It is agreed:

1. Definitions and Interpretation
   1. In this Agreement where the context so admits the following words and expressions shall have the following meanings:
2. **"Compensation Code"** means the body of statute and case law and the established practices for the assessment, payment and determination of compensation for compulsory acquisition of land and rights, including the Land Compensation Acts of 1961 and 1973, the Compulsory Purchase Act 1965, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017, in each case as amended from time to time.
3. **"Compulsory Purchase Order"** means the Chichester District Council (Tangmere) Compulsory Purchase Order 2020.
4. **"Existing Rights"** means the rights granted in the Transfer.
5. **"Independent Surveyor"** means an independent chartered surveyor who is suitably experienced and at least ten years qualified to be appointed jointly by the parties to this Agreement and whose identity is agreed between all the parties or, in the absence of such agreement, is chosen by the President for the time being of the Royal Institution of Chartered Surveyors.
6. **"Objection"** means Heaver's objection to the Compulsory Purchase Order submitted on 9 December 2020 as supplemented by a letter dated 17 August 2021.
7. "Order Land" means the land described in the Schedule to the Compulsory Purchase Order and shown delineated and edged red and shaded pink on the map referred to in the Compulsory Purchase Order.
8. **"Transfer"** means the transfer dated 3 November 2006 and made between (1) Heaver and (2) Temple Bar Partnership LLP.
9. "VAT" means value added tax charged under the Value Added Tax Act 1994 and any similar replacement and any similar additional tax.
10. "Working Day" means a day other than Saturday, Sunday or any public or statutory bank holiday.
    1. Throughout this Agreement unless the context otherwise requires:
       1. words importing the masculine gender only shall include the feminine gender and neuter; and
       2. words importing the singular number only shall include the plural number and vice versa.
    2. Any reference to any statute shall include any re-enactment consolidation and/or renewal thereof for the time being in force and any references to any statute or statutes in general any order instrument plan regulation permission and direction made or issued thereunder or deriving validity therefrom.
    3. Any obligation on a party to do any act, matter or thing includes an obligation to procure that it be done and any obligation not to do any act or thing includes an obligation not to suffer or permit the doing of that act or thing.
    4. Any consent approval authorisation or notice required or given under this Agreement shall only take effect if given in writing.
    5. All Schedules and Appendices to this Agreement shall be deemed to form part of this Agreement.
    6. The headings in this Agreement are inserted for convenience only and shall not affect its construction or interpretation.
    7. References to a Clause, Schedule or Appendix are (unless otherwise stated) to a Clause in and an Appendix or Schedule to this Agreement.
    8. Words preceding “include”, “includes”, “including”, “included”, and “in particular” shall be construed without limitation by the words which follow those words.
11. Conditionality
    1. Subject to clause 2.2 below, this Agreement shall come into effect upon the confirmation of the Compulsory Purchase Order by the Secretary of State for Housing, Communities and Local Government.
    2. Clauses 3, 5, 6, 7, 8, 9, 10 and 11 will come into effect on the date of this Agreement.
12. Withdrawal of Objection

In consideration of the terms of this Agreement, Heaver agrees to withdraw its Objection on the date of this Agreement.

1. Acquisition of the Existing Rights
   1. In the event that the Council intends to implement the Compulsory Purchase Order by serving a notice to treat or general vesting declaration in respect of the Order Land or any part of it subject to the Existing Rights or to acquire by private treaty any part of the Order Land subject to the Existing Rights for the Scheme, the Council and Countryside must give written notice to Heaver not later than 25 Working Days before (i) service of the notice to treat or general vesting declaration or (ii) the acquisition (as the case may be) confirming whether or not the Existing Rights can be accommodated within the Scheme.
   2. In the event that the notice served by the Council and Countryside under clause 4.1 above confirms that the Existing Rights can be accommodated within the Scheme, the Council and/or Countryside shall proceed to enter into a legally binding and effective deed of easement with Heaver which is no less favourable than the Existing Rights and which is expressed to come into effect immediately upon the extinguishment of the Existing Rights and/or on the compulsory acquisition of the Order Land or the relevant part thereof and which must be expressed to subsist after the implementation of the Compulsory Purchase Order.
   3. In the event that the notice served by the Council and Countryside under clause 4.1 above confirms that the Existing Rights cannot be accommodated within the Scheme, the Council and Countryside shall ensure that the notice is accompanied by written details of the design, route and location of rights that represent a suitable alternative to the Existing Rights of at least equivalent standard (the **"Replacement Rights"**) for Heaver's approval (such approval not to be unreasonably withheld or delayed).
   4. If Heaver does not approve the Replacement Rights and a dispute arises between the parties as to the Replacement Rights (including the suitability of their design, route and location and whether they are of equivalent standard to the Existing Rights) that cannot be resolved following the use of reasonable endeavours by all parties for at least 20 Working Days, any party may refer the dispute to an Independent Surveyor for determination, whose decision shall be final and binding on the parties save in the case of manifest error. The Independent Surveyor's fees will be borne by the Council and Countryside. The Independent Surveyor will:

(a) act as an expert and not an arbitrator;

(b) consider the representations of each party, provided that they are made within 10 Working Days of the Independent Surveyor's appointment;

(c) consider any responses of each party to another party's initial representations, provided that they are made within 10 Working Days of the former party's receipt of the latter's initial representations;

(c) make his decision not later than 30 Working Days after his appointment; and

(d) give reasons for his decision.

* 1. Following approval of the Replacement Rights under clause 4.3 above (or determination under clause 4.4 above), the Council and/or Countryside shall proceed to enter into a legally binding and effective deed of easement with Heaver for the grant of the Replacement Rights and which is expressed to come into effect immediately upon the extinguishment of the Existing Rights and/or on the compulsory acquisition of the Order Land or the relevant part thereof and which must be expressed to subsist after the implementation of the Compulsory Purchase Order.
  2. For the avoidance of doubt, the Council and Countryside will be responsible for the construction of any works required for the grant of the Replacement Rights and shall carry out such works:

(a) in a good and workmanlike manner;

(b) to ensure that the Replacement Rights are operational prior to any interference with the Existing Rights; and

(c) at the Council's and Countryside's expense.

* 1. The Council and Countryside shall not interfere with the Existing Rights until a deed of easement has been completed under clause 4.2 or 4.5 above and, if clause 4.4 applies, the Replacement Rights have been granted to Heaver and are operational.
  2. The Council and Countryside shall bear all reasonable and proper costs incurred by Heaver in reviewing, amending and/or approving the details of the Replacement Rights and in reviewing, negotiating and completing the deed of easement under clause 4.2 or 4.5 above.
  3. The Council and Countryside shall bear all reasonable and proper costs incurred by Heaver in registration of any deed of easement entered into under clause 4.2 or 4.5 above at HM Land Registry and shall provide all reasonable assistance to secure such registration.
  4. The Council and Countryside shall indemnify Heaver against any loss or damage caused or costs incurred as a direct result of or arising in connection with:

(a) any interference with or extinguishment of the Existing Rights (unless in accordance with the terms of this Agreement) by Countryside, the Council or the agents or employees of Countryside or the Council or by any person exercising powers granted by the Compulsory Purchase Order; or

(b) breach of the terms of this Agreement.

* 1. The Council and Countryside acknowledge and agree that nothing in this Agreement affects Heaver's right to claim compensation in accordance with the Compensation Code for the extinguishment or acquisition of, or interference with, the Existing Rights as a result of the Scheme, the Compulsory Purchase Order and/or the exercise of powers under the Compulsory Purchase Order.

1. Costs

On or before the date of this Agreement, the Council and Countryside shall pay to Heaver all reasonable and proper costs, charges and expenses properly incurred by Heaver in connection with the Compulsory Purchase Order including reviewing and objecting to the Compulsory Purchase Order, negotiating withdrawal of Heaver's objection to the Compulsory Purchase Order and reviewing, negotiating and completing this Agreement up to a maximum of £[ ] plus VAT.

1. Assignment

The benefits and rights conferred by this Agreement may be assigned or novated by any party with the written consent of the other parties (such consent not to be unreasonably withheld or delayed).

1. Joint and several liability

The liabilities and obligations of the Council and Countryside in this Agreement are joint and several.

1. Notices
   1. All notices given by a party pursuant to the provisions of this Agreement are to be in writing and shall be sufficiently served if delivered by hand or recorded delivery post to the other party:
      1. (in the case of Countryside) to the address given in this Agreement;
      2. (in the case of Heaver) to the address given in this Agreement;
      3. (in the case of the Council) to the address given in this Agreement;

or in each case such other address as the relevant party may from time designate to the others in writing.

* 1. If a notice is served after 4.00pm on a Working Day, or on a day which is not a Working Day, it is to be treated as having been served on the next Working Day.

1. VAT

All sums payable by the Council and/or Countryside are exclusive of any VAT that may be chargeable. The Council and/or Countryside shall pay VAT in respect of all supplies made to it in connection with this Agreement on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.

1. Third Party Rights

Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

1. Governing Law and Jurisdiction
   1. This Agreement shall be governed by and construed in accordance with English law.
   2. The parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

**Delivered as a deed on the date of this document.**

**EXECUTION PAGE**

[EXECUTION CLAUSES]