

**Planning Obligation by Unilateral  
Undertaking under Section 106 of the Town  
and Country Planning Act 1990**  
relating to development at Penrhos Farm,  
LLanymynech

Dated : 2021

Given by:

**Rebo UK Limited (1)**

**James William Owen and Rhian Megan Jones (2)**

**Clydesdale Bank Plc (3)**

**To:**

**Powys County Council**

Planning reference:

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DATE

2021

This Unilateral Undertaking is given by :

- (1) **REBO UK LIMITED** (Co No 05890328) 61 Bridge Street, Kington, Herefordshire, England, HR5 3DJ ("**the First Owner**");
- (2) **JAMES WILLIAM OWEN** and **RHIAN MEGAN JONES** both of Hafren House, Llandrinio, Llanymynech SY22 6SG ("**the Second Owner**"); and
- (3) **CLYDESDALE BANK PLC** (Scot Co Reg. No. SC001111) whose address for service is Mortgage Services, PO Box 3105, Clydebank, Glasgow, G60 9AU ("**the Mortgagee**").

To:

**POWYS COUNTY COUNCIL** of Powys County Hall, Spa Road East, Llandrindrod Wells, Powys, LD1 5LG ("**the Council**")

#### INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Commercial Site the Residential Site and the Operating Centre are situated.
- 2 The First Owner is the freehold owner of the Commercial Site and the Operating Centre.
- 3 The Second Owner is the freehold owner of the Residential Site
- 4 The Mortgagee has a charge over the Residential Site dated 7 March 2018.
- 5 James Owen submitted the Application to the Council
- 6 It is the intention of the Second Owner to limit the residential occupation of the Barn and the Farmhouse to persons employed on the Commercial Site in the event that the Permission is granted.
- 7 It is the intention of the First Owner to encourage the use of the HGV Route by Heavy Goods Vehicles which serve the Commercial Site and to restrict the use of the Operating Centre as set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

#### OPERATIVE PART

## 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 validated by the Council and allocated reference number [       ]
“Barn”	The barn shown shaded blue on Site Plan which has the benefit of the Residential Permission;
“Commercial Permission”	full planning permission subject to conditions granted pursuant to the Application;
“Commercial Site”	the land registered at HM Land Registry under title number CYM770434 and which is bound by the obligations in Part 2 of the Schedule to this Deed and which is shown for identification edged in red on the Site Plan;
“Farmhouse”	The house shown shaded orange on the Site Plan;
“Heavy Goods Vehicle”	A vehicle constructed or adapted to haul goods with a permissible maximum weight exceeding 7.5 tonnes;
“HGV Route”	The route for Heavy Goods Vehicles between the Site and the A483 shown highlighted on the Routing Plan;
“Operating Centre”	the land registered at HM Land Registry under title number CYM165682 which is bound by the obligations in Part 3 of the Schedule to this Deed and which is shown for identification edged in pink on the Site Plan;
“Site Plan”	the plan attached to this Deed marked Site Plan;
“Residential Permission”	Reserved matters permission for the residential conversion of the Barn given reference number P/2009/0956;
“Residential Site”	the land registered at HM Land Registry under title number CYM720747 which is bound by the obligations in Part 1 of the Schedule to this Deed and which is shown for identification edged in green on the Site Plan;
“Routing Plan”	The plan annexed hereto and marked Routing Plan;

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed;
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner;
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise;
- 2.5 Any reference 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;
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions;
- 2.7 The headings and contents list are for reference only and shall not affect construction;
- 2.8 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing to be done by any third party.

## **3 LEGAL BASIS**

- 3.1 This Deed is given pursuant to Section 106 of the Act;
- 3.2 Undertakings given by the Owner under this Deed create planning obligations pursuant to Section 106 of the Act which bind the Site and are enforceable by the Council against the Owner.

## **4 CONDITIONALITY**

- 4.1 This Deed takes effect immediately save that the planning obligations in the Schedule shall not be enforceable by the Council until the grant of the Commercial Permission AND FURTHER in the event of an appeal only if (in relation to the particular obligation in the Schedule) the Planning Inspector on behalf of the Secretary of State for Communities and Local Government has confirmed in his or her decision letter in relation to the appeal that the particular obligation in question is necessary to make the development permitted by the decision letter acceptable in planning terms and in his or her view comply with Regulation 122 of The Community Infrastructure Levy Regulations 2010 and Government Policy and for the purpose of this clause 4 only 'Planning Inspector' shall be taken to include the Welsh Ministers (if the appeal contemplated is reserved to them) and the Administrative Court (if such appeal decision letter is the subject of challenge

pursuant to Section 284 of the Act) and 'decision letter' shall include the decision or judgment of either of them as the circumstances shall indicate.

## **5 THE OWNER'S COVENANTS**

5.1 The First Owner and the Second Owner covenant with the Council as set out in the Schedule.

## **6 MISCELLANEOUS**

6.1 The First Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the approval of this Deed;

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 save for the avoidance of doubt by the Council;

6.3 This Deed shall be registrable as a local land charge by the Council;

6.4 The Owner may at any time after the obligations hereunder have been performed or otherwise discharged make a written request to the Council for written confirmation of such performance or discharge;

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Owner may at any time make a written request to the Council that the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed;

6.6 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;

6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Commercial Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure and the Owner may make a written request to the Council that the Council shall (at their own cost) forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed;

6.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed in so far as they bind the Commercial Site after it shall have parted with its entire interest in the Commercial Site or the part in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest;

6.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed in so far as they bind the Residential Site after it shall have parted with its entire interest in the Residential Site or the part in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest;

- 6.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed in so far as they bind the Operating Centre after it shall have parted with its entire interest in the Operating Centre or the part in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest;
- 6.11 The obligations contained in this Deed shall not be binding nor enforceable against any statutory undertaker or other person who acquires any part of the Commercial Site Residential Site or Operating Centre or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport or against any person who acquires an easement or licence in relation to any part of the Commercial Site Residential Site or Operating Centre;
- 6.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Commercial Site Residential Site or Operating Centre in accordance with a planning permission (other than the Commercial Permission or the Residential Permission) granted (whether or not on appeal) after the date of this Deed;
- 6.13 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;
- 6.14 Any notice or communication to be given pursuant to this Deed shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service. The address for service on the Parties shall be that stated in this Deed or such other address in England for service as the Parties to be served may have previously notified in writing and notices to the Council shall be addressed to The Head of Planning, Powys County Council, Powys County Hall, Spa Road East, Llandrindrod Wells, Powys, LD1 5LG;
- 6.15 The obligations in this Deed shall cease to have effect if use of the Commercial Site for the purposes anticipated by the Application permanently cease or if the Commercial Site is developed (by change of use or physical development) in a manner which prevents the use pursuant to the Commercial Permission from continuing.

## **7 MORTGAGEE'S CONSENT**

- 7.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Residential Site shall be bound by the obligations contained in this Deed and that the security of the Mortgagee over the Residential Site shall take effect subject to this Deed;
- 7.2 The Mortgagee shall have no liability under this Deed unless it takes possession of the Residential Site in which case it will be bound by the obligations which bind the Residential Site as owner of that part of the Residential Site. For the avoidance of doubt, the Mortgagee shall only be liable for any breach of this undertaking if it has itself caused the breach whilst mortgagee in possession and shall in no circumstances be liable for any pre-existing breach. The Mortgagee shall have no

liability after it has discharged the security or has disposed of the Site which is subject to its security whether by sale or otherwise;

- 7.3 It is acknowledged and declared that this Deed has been entered into by the Owner with the intent that the security of any future mortgage/charge over the Residential Site the Commercial Site or the Operating Centre shall take effect subject to this Deed to the extent that it binds the relevant land PROVIDED THAT any mortgagee/chargee of that part of the Residential Site the Commercial Site or the Operating Centre to which a breach relates shall only be liable for any breach that itself has caused whilst mortgagee in possession and shall not be liable for any pre-existing breach but FOR THE AVOIDANCE OF DOUBT any successor in title to any mortgagee/chargee will subject to clause 6.11 be responsible as successor in title to the owner of the relevant land for (i) any obligation(s) still to be performed and ii) any obligation(s) which has not been satisfied in full because there has been a breach which has not been remedied or only partially remedied.

## **8 WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing 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 for acting upon any subsequent breach or default.

## **9 CHANGE IN OWNERSHIP**

The Owner agrees with the Council to give the Council written notice within 28 days of any change in ownership of their interest in the Commercial Site the Residential Site or the Operating Centre occurring before all 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 Commercial Site Residential Site or Operating Centre purchased by reference to a plan PROVIDED THAT this obligation shall not apply to any disposal to any of the statutory utilities for their operation purposes or to any mortgage or charge on the Site.

## **10 JURISDICTION**

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

## **11 DELIVERY**

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.

## **12. SECTION 73 VARIATIONS**



In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in relation to a variation of one or more conditions of the Commercial Permissions or the Residential Permission references in this Deed to the Application and the Commercial Permissions and the Residential Permission shall be deemed to include any such subsequent planning permissions and this Deed shall henceforth take effect and be read and construed accordingly and for the avoidance of doubt it shall also continue to apply to the Commercial Permissions and the Residential Permission.

IN WITNESS whereof the First Owner the Second Owner and the Mortgagee have executed this Deed on the day and year first before written.

## SCHEDULE

### The Owner's Covenants with the Council

#### Part 1

1. The Second Owner with the intention of binding the Residential Site covenants with the Council as follows:
  - 1.1 Not to allow either the Farmhouse or the Barn to be occupied for residential purposes other than by persons employed on the Commercial Site and persons living with them as part of their household SAVE THAT it shall not be a breach of this condition if a former employee or members of their household remain in occupation of the Barn or the Farmhouse after the relevant employment is terminated PROVIDED THAT the Owner shall use reasonable endeavours to obtain vacant possession as soon as practicable after the employment has terminated.
  - 1.2 To provide to the Council upon written request (such information to be provided in writing within ten working days of such written request being received) evidence in writing that the occupier of the Barn (if any) and the occupier of the Farmhouse (if any) are employed on the Commercial Site.

#### Part 2

2. The First Owner so as to bind the Commercial Site covenants with the Council as follows:
  - 2.1 Within four weeks from the date on which the Commercial Permission is granted and for as long thereafter as the Commercial Site is occupied for the purposes anticipated in the Application to issue instructions in writing including a copy of the Routing Plan to the drivers and operators of all Heavy Goods Vehicles visiting the Commercial Site pursuant to the Commercial Permission that Heavy Goods Vehicles serving the Site in connection with the Commercial Permission must (except in case of emergency, if directed by an official including but not limited to police or other emergency services or if it is otherwise unlawful or impractical to do so) use only the HGV Route to access the Site from the A483 or to travel to the A483 from the Site and require them to agree by signing a copy of them to comply with their terms
  - 2.2 The Owner will display contact details so that they are legible from the entrance to the Commercial Site and will ensure that it is possible for members of the public to contact it as a minimum in writing and by email to register a complaint about routing of vehicles.
  - 2.3 If it comes to the attention of the Owner that any driver of a Heavy Goods Vehicle has without good reason failed to comply with the instructions referred to in 2.1 above he/she will (after a proper investigation, if the Owner is reasonably satisfied that there has been a breach) be issued with a written warning by the Owner and in

the case of an employed driver a copy of the warning will be sent to the operator and both the driver and the operator will be told that after two such breaches (so on the occurrence of the third) the driver will no longer be allowed to drive Heavy Goods Vehicles serving the Commercial Site.

- 2.4 On written request from the Council the Owner will provide to it within ten working days written evidence of any complaints received in the previous twelve month period about alleged breaches of the routing instructions and evidence of the action taken in response in accordance with 2.3 above PROVIDED THAT there shall be no obligation in doing so to identify any individual driver or operator by name the drivers/operators may be identified by a unique identification code

### Part 3

3. The First Owner with the intention of binding the Operating Centre covenants with the Council as follows:
- 3.1 For as long as the Commercial Site is occupied for the purposes anticipated in the Application Only to use the Operating Centre as an operating centre for vehicles which it operates in association with the use of the Commercial Site for the purposes anticipated in the Application
- 3.2 Within four weeks from the date that the Commercial Permission is granted and for as long as the Commercial Site is occupied for the purposes anticipated in the Application to issue instructions in writing including a copy of the Routing Plan to the drivers and operators of all Heavy Goods Vehicles visiting the Operating Centre must (except in case of emergency, if directed by an official including but not limited to police or other emergency services or if it is otherwise unlawful or impractical to do so) use only the HGV Route to access the Operating Centre from the A483 or to travel to the A483 from the Operating Centre and require them to agree by signing a copy of them to comply with their terms;
- 3.3 The Owner will display contact details so that they are legible from the entrance to the Operating Centre and will ensure that it is possible for members of the public to contact it as a minimum in writing and by email to register a complaint about routing of vehicles.
- 3.4 If it comes to the attention of the Owner that any driver of a Heavy Goods Vehicle has without good reason failed to comply with the instructions referred to in 3.2 above he/she will (after a proper investigation, if the Owner is reasonably satisfied that there has been a breach) be issued with a written warning by the Owner and in the case of an employed driver a copy of the warning will be sent to the operator and both the driver and the operator will be told that after two such breaches (so on the occurrence of the third) the driver will no longer be allowed to drive Heavy Goods Vehicles serving the Operating Centre.
- 3.5 On written request from the Council the Owner will provide to it within ten working days written evidence of any complaints received in the previous twelve month period about alleged breaches of the routing instructions and evidence of the action taken in response in accordance with 3.4 above PROVIDED THAT there shall be

no obligation in doing so to identify any individual driver or operator by name the drivers/operators may be identified by a unique identification code

EXECUTED AS A DEED by **Rebo UK Limited** )  
acting by a director and its secretary or two directors: )

Signature of Director

Signature of Director/secretary:

EXECUTED AS A DEED by **James William Owen** )  
in the presence of: )

Witness Signature:

Witness Name:

Witness Address:

EXECUTED AS A DEED by **Rhian Megan Jones** )  
in the presence of: )

Witness Signature:

Witness Name:

Witness Address:

Signed as a Deed by )  
As Attorney of )  
**CLYDESDALE BANK PLC** )  
in the presence of:- )

.....  
(Full name of witness)

.....  
(Signature of witness)

.....  
Address

.....

.....

.....  
Occupation