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Dated: 2023

(1) WEST SUSSEX COUNTY COUNCIL

(2) SAFESTORE PROPERTIES LIMITED

(3) ADUR DISTRICT COUNCIL

(4) WEST SUSSEX COUNTY COUNCIL

Agreement

under section 106 Town and Country Planning Act 1990 relating to land forming the Lorry And Car Park, Albion Street, Southwick, West Sussex

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THIS AGREEMENT is made on 2023

BETWEEN

(1) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester PO19 1RQ ("**the Owner**");

(2) **SAFESTORE PROPERTIES LIMITED** a private limited company registered in England with company number 03146412 whose registered office is at Brittanic House, Stirling Way, Borehamwood, Hertfordshire WD6 2BT ("**the Developer**");

(3) **ADUR DISTRICT COUNCIL** of Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA ("**the District Council**"); and

(4) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester PO19 1RQ ("**the County Council**")

BACKGROUND

(A) For the purposes of the 1990 Act, the District Council is the local planning authority for the area within which the Site is situated.

(B) The County Council is County Planning Authority and the Highway Authority for the area in which the Site is situated

(C) The Owner is the registered proprietor of the freehold interest in the Site which is registered at Land Registry under title numbers P19821, WSX340659 and WSX414314 free from encumbrances which would otherwise prevent the Owner from giving this Agreement.

(D) The Developer has entered into a contract to acquire the Site which is conditional on the grant of the Planning Permission and submitted the Application to the District Council on 1 October 2021.

(E) On 7 February 2023 the District Council issued a decision notice refusing planning permission for the Development and the Developer has submitted the Appeal.

(F) The Developer is party to this Agreement solely to acknowledge the provisions contained herein but shall not be liable for any obligations unless and until it acquires an interest in the Site being more than an option to purchase or conditional contract.

(G) The parties have entered into this Agreement with the intention that the obligations contained herein will take effect (subject to **Clause 3** of this Agreement) and may be enforced by the District Council against the Owner and its successors in title as set out herein in the event that the Planning Permission is granted pursuant to the Appeal and the Decision Letter confirms that the obligations set out in this Agreement are:

(a) necessary to make the Development acceptable in planning terms;

(b) directly related to the Development; and

(c) fairly and reasonably related in scale and kind to the Development.

OPERATIVE PROVISIONS

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and expressions have the following meanings:

1987 Order	means the Town and Country Planning (Use Classes) Order 1987 (as amended)

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1990 Act	the Town and Country Planning Act 1990 (as amended)
Application	The application for detailed planning permission for the Development and allocated reference number AWDM/1856/21 by the District Council
Appeal	the appeal lodged with the Planning Inspectorate on 3 August 2023 pursuant to section 78 of the 1990 Act by the Owner in respect of the District Council's refusal of the Application which has been allocated reference APP/Y3805/W/23/3327190
Commencement of Development	the commencement of the Development by the Owner carrying out a material operation within the meaning of Section 56 of the 1990 Act provided that for the purpose of this Agreement but not further or otherwise the Development shall not be deemed to have been Commenced by the carrying out of any operations in connection with site clearance, demolition, archaeological investigation, investigation for the purposes of assessing contamination, remedial action in respect of any contamination, diversion and laying of services whether existing or new, the erection of a means of enclosure for the purposes of site security and for the display of advertisements and "**Commenced**" shall be construed accordingly
County Council Contributions	means the Sustainable Transport Contribution and the Travel Plan Monitoring Fee or either of them as the context so requires
Decision Letter	the formal decision letter from the Inspector notifying the parties to the Appeal of his decision in respect of the Appeal and the reasons for reaching that decision
Development	the development of the Site for the erection of a self-storage warehouse (within use class B8 of the 1987 Order) with associated parking, circulation and landscaping
Index	the All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation
Index Linked	means in relation to the County Council Contributions payable by the Owner under this Agreement increased by the application of the following formula: A = B x (C/D) where: 'A' is the relevant County Council Contribution actually payable on the date of payment

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	'B' is the relevant County Council Contribution as specified in this Agreement 'C' is the BCIS Index for the quarter preceding the date of payment 'D' is the BCIS Index for 20th January 2023
Inspector	the representative of the Planning Inspectorate appointed on behalf of the Secretary of State to determine the Appeal
Interest	interest at the base lending rate of Barclays Bank Plc from time to time
Monitoring Fee	means the sum of £600.00 (six hundred pounds) payable by the Owner to the District Council in accordance with **Schedule 1** towards monitoring the Owner's compliance with this Deed for up to 3 (three) years
Occupation	occupation for the purposes permitted by the Planning Permission but shall not include (i) daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development; or (ii) the use of any part of the Site for the marketing of the Development; or (iii) the storage of plant and materials and "**Occupy**" shall be construed accordingly
Plan	the plan attached to this Agreement at **Appendix 1**
Planning Inspectorate	means the executive agency of the Department for Levelling Up, Housing and Communities that deals with planning appeals, national infrastructure planning applications, examinations of local plans and other planning-related and specialist casework in England
Planning Permission	the planning permission to be granted for the Development pursuant to the Appeal
Secretary of State	the Secretary of State for Levelling Up, Housing and Communities
"Section 73 Consent"	means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to Section 73 of the Act was granted subject to

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Site	the land within title numbers P19821, WSX340659 and WSX414314 shown indicatively edged red on the Plan
Total Access Demand Contribution	means the sum of three thousand five hundred and nine pounds (£3509) which is calculated using current occupancy rates from census statistics published by the Office for National Statistics payable in accordance with Schedule 1 of this Agreement and by the District Council to the County Council in accordance with Schedule 2 which is calculated in accordance with the Total Access Demand Methodology and to be used towards sustainable transport projects within the Shoreham Harbour Transport Study PROVIDED THAT should Commencement of Development/First Occupation take place after 2021, the sum shall be re-calculated using the latest published census statistics published by the Office for National Statistics
Total Access Demand Methodology	*means the methodology developed by the County Council and adopted by the District Council which requires contribution towards the cost of infrastructure and other measures that are necessary to mitigate the impact of development*
Travel Plan Monitoring Fee	means the sum of £1,500 (One Thousand Five Hundred Pounds) Index Linked payable by the Owner to the District Council in accordance with **Schedule 1** and by the District Council to the County Council in accordance with **Schedule 2** towards the cost to the County Council of monitoring the delivery of the travel plan to be implemented by the Owner in accordance with the relevant condition of the Planning Permission

1.2 Where in this Agreement 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 Agreement.

1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.4 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 interchangeable in that manner.

1.5 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 against each individually unless there is an express provision otherwise.

1.6 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.

1.7 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party.

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1.8 The headings and contents list are for reference only and shall not affect construction.

1.9 Any obligation, covenant, undertaking or agreement by any party to this Agreement not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit or allow the doing of that act or thing.

2. LEGAL BASIS

2.1 This Agreement is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 with the intention that subject to **clauses 6.4** and **6.6** it shall bind the Owner's interest in the Site.

2.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the District Council as a local planning authority against the Owner and its successors in title.

2.3 Covenants made hereunder on the part of the District Council shall be enforceable against the District Council and any statutory successor to it as local planning authority by the County Council and the Owner, including their successors in statutory function and successors in title (respectively).

3. CONDITIONALITY

3.1 Save for this **clause 3** and **clause 5.3** (which come into effect on the date hereof) this Agreement is conditional upon and will not come into effect until:

3.1.1 the Appeal is allowed by the Inspector and the Planning Permission granted accordingly;

3.1.2 a period of 8 (eight) weeks has expired from the date of the Appeal being allowed and no judicial review proceedings or other legal challenge has been issued in connection with the Appeal and/or the Planning Permission; and

3.1.3 the Decision Letter specifies that the obligations within this Agreement are compliant with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) PROVIDED THAT in the event the Decision Letter specifies that any of the obligations within this Agreement are not compliant with the said Regulation 122 then that obligation as so specified shall be treated as though it is struck out from this Agreement and shall not bind the Site.

4. QUASHING OR REVOCATION OF PLANNING PERMISSION

4.1 If the Planning Permission is quashed or revoked or if it expires without the Development having been Commenced this Agreement shall cease to have effect.

5. OBLIGATIONS OF THE PARTIES

5.1 The Owner covenants with the District Council to comply with the obligations as set out in **Schedule 1**.

5.2 The District Council covenants with the County Council and the Owner to comply with the obligations as set out in **Schedule 2**.

5.3 The County Council covenants to comply with the obligations set out in Schedule 3

5.4 Upon completion of this Agreement, the Developer covenants to pay the District Council's and County Council's reasonable and proper legal costs incurred in connection with the preparation, negotiation and completion of this Agreement.

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6. **MISCELLANEOUS**

6.1 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2 This Agreement shall be registered as a local land charge by the District Council.

6.3 Insofar as any clause or clauses of this Agreement 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 Agreement.

6.4 No person will be liable for any breach of the terms of this Agreement 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 6.4**.

6.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

6.6 The obligations contained in this Agreement shall not be binding upon nor enforceable against:

6.6.1 any mortgagee or chargee with the benefit of a charge over the Site (or any part thereof) save where any breach of this Agreement occurs at a time when such mortgagee or chargee is in possession of the Site (or the part thereof to which such charge relates);

6.6.2 any statutory undertaker; or

6.6.3 any other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

6.7 If any provision of this Agreement is declared by any Court to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect.

7. **WAIVER**

7.1 No waiver (whether expressed or implied) by the District Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8. **NOTICES**

8.1 In this **clause 8**:

8.1.1 'the District Council's address' means the address of the District Council shown on the first page of this Agreement or such other address as the District Council may from time to time notify to the parties and their successors as being its address for service for the purposes of this Agreement;

8.1.2 'the County Council's address' means the address of the County Council shown on the first page of this Agreement or such other address as the County Council may from time to time notify to the other parties and their successors as being its address for service for the purposes of this Agreement;

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8.1.3 'The addresses of the Owner' means in respect of the Owner the address shown on the first page of this Agreement or such other address as it may have from time to time notified to the parties as being its address for service for the purposes of this Agreement; and

8.1.4 'The addresses of the Developer' means in respect of the Developer the address shown on the first page of this Agreement or such other address as it may have from time to time notified to the parties as being its address for service for the purposes of this Agreement.

8.2 Any notice or other communication given or made in accordance with this Agreement shall be in writing and:

8.2.1 may (in addition to any other effective mode of service) be delivered personally or sent by registered or recorded delivery or prepaid first class letter post or its equivalent and:

8.2.1.1 shall in the case of a notice or other communication to the District Council be served on the District Council at the District Council's address addressed to the Head of Planning and Development;

8.2.1.2 shall in the case of a notice or other communication to the County Council be served on the District Council at the County Council's address addressed to the Legal Department

8.2.1.3 shall in the case of a notice or other communication to the Owner be served on the Owner at the Owner's address addressed to the Legal Department; and

8.2.1.4 shall in the case of a notice or other communication to the Developer be served on the Developer at the addresses of the Developer.

9. DEVELOPER CONSENT

9.1 The Developer acknowledges and declares that this Agreement has been given by the Owner with its consent and that it shall be bound by the covenants and obligations contained in this Agreement as a successor in title to the Owner in the event that it acquires an interest in the Site or part of it and shall comply with clause.

10. SECTION 73 CONSENTS

10.1 If any Section 73 Consent is granted after the date of this Agreement:

10.1.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent; and

10.1.2 the definitions of Application, Development and Planning Permission (other than for the purpose of **Clause 1**) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself,

PROVIDED THAT in the event of a further planning obligation under section 106 of the Act being agreed by the District Council and being binding on any Section 73 Consent, this Agreement shall not apply to that permission if that further planning obligation expressly states that it is in substitution for the obligations in this Agreement and FURTHER PROVIDED THAT this **clause 10** shall not prevent the District Council and/or the County Council from requiring at its absolutely discretion (acting in accordance with its statutory functions) that further planning obligations be secured in respect of any such Section 73 Consent.

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11. **DETERMINATION BY EXPERT**

11.1 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner and/or the District Council and/or the County Council concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 Working Days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms:

11.1.1 The person to be appointed pursuant to **Clause 11** shall if possible be a person having fifteen years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute.

11.1.2 The reference to the expert shall be on terms that:

11.1.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;

11.1.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;

11.1.2.3 the expert shall be bound to have regard to the said submissions and representations;

11.1.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;

11.1.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and

11.2 the findings of the expert shall save in the case of manifest material error be final and binding on the Owner and the District Council and the County Council save that the parties retain the right to refer to the Courts on a matter of law

12. **INTEREST**

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

13. **VAT**

13.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

14. **JURISDICTION**

14.1 This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the Courts of England.

15. **DELIVERY**

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

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IN WITNESS whereof the parties hereto have executed this Agreement on the day and year first before written.

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1 SCHEDULE 1~~1~~

OWNER'S OBLIGATIONS TO THE DISTRICT COUNCIL

The Owner covenants with the District Council as follows:

1. To notify the District Council 14 days prior to each of the Commencement of Development and the first Occupation of the Development.

2. To pay the Monitoring Fee and the Travel Plan Monitoring Fee to the District Council prior to the Commencement of Development.

3. Not to Commence the Development unless and until the Monitoring Fee and the Travel Plan Monitoring Fee has been paid to the District Council.

4. To pay the Sustainable Transport Contribution to the District Council prior to first Occupation of the Development.

5. Not to first Occupy the Development unless and until the Sustainable Transport Contribution has been paid to the District Council.

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2 SCHEDULE 2~~2~~

DISTRICT COUNCIL'S OBLIGATIONS TO THE COUNTY COUNCIL AND THE OWNER

1. The District Council covenants with the County Council and the Owner to transfer the Sustainable Transport Contribution and the Travel Plan Monitoring Fee (including any indexation and Interest received) to the County Council within 28 days of receipt of each contribution from the Owner.

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SCHEDULE 3

COVENANTS BY THE COUNTY COUNCIL

1.1 The County Council covenants with the Owner that upon receipt of the Sustainable Transport Contribution as paid to the County Council under Schedule 2 it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same towards sustainable transport projects within the Shoreham Harbour Transport Study.

1.2 The County Council covenants that upon written request on or after ten years of the date of receipt of the Sustainable Transport Contribution it will issue to the party that paid the said contribution an account certified by the Director Finance and Support Service for the time being of the County Council detailing the Scheme on which the Sustainable Transport Contribution has been expended by the County Council

1.3 If or to the extent the Sustainable Transport Contribution shall not have been spent by the County Council at the end of the period referred to in paragraph 1.2 above the County Council shall on such date refund to the party that paid the Sustainable Transport Contribution any unexpended sum together with compound interest on such unexpended sum from the date of receipt of the said Contribution by the County Council to the date of repayment at the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.

1.4 If at the end of the period referred to in paragraph 1.2 above the County Council shall have entered into a contract or other legally binding obligation to expend the Sustainable Transport Contribution or part thereof for the purposes specified in paragraph 1.1 above then the County Council shall not be required to refund any part of the Sustainable Transport Contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Fire and Rescue Service Contribution and refund any unexpended part of the Sustainable Transport Contribution in the manner set out in paragraph 1.1 above.

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The common seal of **WEST SUSSEX COUNTY COUNCIL** was affixed to this Deed in the presence of:

Executed as a Deed by

SAFESTORE PROPERTIES LIMITED

acting by , ...
Director

a director, in the presence of:

Witness Signature:

Witness Name:

Witness Address:

The common seal of **ADUR DISTRICT COUNCIL** was affixed to this Deed in the presence of:

The common seal of **WEST SUSSEX COUNTY COUNCIL** was affixed to this Deed in the presence of:

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1 APPENDIX 1~~1~~

The Plan

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