

DATE 4th October 2019

(1) IPSWICH BOROUGH COUNCIL

and

(2) SUFFOLK COUNTY COUNCIL

and

(3) CHELTENHAM DEVELOPMENTS TOP SITE LIMITED

AGREEMENT

Pursuant to Section 106 Town and Country Planning Act 1990
as amended and other statutory provisions
relating to Land to the west of Sandy Hill Lane, Ipswich in the County of Suffolk

Legal Services
Ipswich Borough Council
Grafton House
15-17 Russell Road
Ipswich
Suffolk
IP1 2DE

THIS DEED OF AGREEMENT is made the 4th day of October 2019

BETWEEN:

- 1. **IPSWICH BOROUGH COUNCIL** of Grafton House, 15-17 Russell Road, Ipswich, Suffolk IP1 2DE (hereinafter called "**the Borough Council**"); and
- 2. **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX (hereinafter called "**the County Council**"); and
- 3. **CHELTENHAM DEVELOPMENTS TOP SITE LIMITED** a company incorporated in Guernsey, of Crossways Centre, Braye Road, Vale, Guernsey, GY3 5PH (hereinafter called "**the Owner**")

RECITALS

- (A) The Borough Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Property is situated and is an Authority who may enforce the planning obligations herein.
- (B) The County Council is the county planning authority and is also a local highway authority for the purposes of the Highways Act 1980 a local education authority under the relevant enactment and local library authority who may enforce the planning obligations herein.
- (C) The Property comprises land registered at HM Land Registry under title numbers SK84177 and SK82364.
- (D) The Owner is the freehold owner of the Property free from encumbrances.
- (E) The Owner has submitted the Application to the Borough Council for the grant of the Permission for the development of the Property.
- (F) Pursuant to Section 106 of the 1990 Act the Councils and the Owner have agreed to enter into the Deed and acknowledge that the Development shall not take place until certain restrictions regulating the use of the Property are imposed in the manner hereinafter appearing.
- (G) Having regard to the provisions of the Local Plan, the Borough Council's Core Strategy and Policies Development Plan Document and all other material considerations the Borough Council considers it necessary in the interests of proper planning of its area that provision should be made for regulating the Development in the manner hereinafter appearing and the Borough Council is satisfied that the Permission can only be granted subject to and on completion of this Deed.

OPERATIVE PROVISIONS

- 1. The following expressions shall have the meanings hereby respectively assigned to them:-

General Definitions

"the 1990 Act"	means the Town and Country Planning Act 1990 as amended
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“the Application”	means the planning application given reference IP/17/00769/OUT submitted by the Owner and registered by the Borough Council on 10 th August 2017
“Additional Profit”	means any development profit in the Viability Assessment that is in excess of the sum that equates to 20% of the total gross development value of all the Dwellings up to a maximum sum of £1,278,522 (one million two hundred and seventy eight thousand five hundred and twenty two pounds) (and which for the avoidance of doubt shall not be BCIS Indexed).
“BCIS Index”	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Borough Council County Council and the Owner
“BCIS Indexed”	the increase in the Financial Contributions by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 33 of this Deed.
“Commencement Date”	<p>means the date on which the Development commences by the carrying out on the Property pursuant to the Permission of a material operation as defined in Section 56(4) of the 1990 Act PROVIDED THAT the following operations shall not constitute a material operation for the purposes of this agreement:-</p> <ul style="list-style-type: none"> a) any demolition works or dismantling of any portable buildings and structures b) removal of foundations and hard surfaced areas c) other site clearance works d) site and ground investigations and site surveys e) archaeological investigation f) site decontamination or remediation works or remedial work in respect of other adverse ground conditions

	<p>g) creation of site compounds</p> <p>h) laying of sewers and other services</p> <p>i) diversion of utilities and services</p> <p>j) erection of hoardings, fences or other means of enclosure required in connection with construction activities</p> <p>k) works to reduce impacts of construction activities on nearby residential properties</p> <p>l) construction of temporary haul roads</p> <p>m) regrading of the Property including infilling and land raising</p> <p>n) tree protection measures</p> <p>o) ecological mitigation works or works for the protection of wildlife and wildlife habitats</p> <p>p) works or measures required by this Deed or by the Permission to be carried out or commenced prior to the Commencement Date</p> <p>q) exploratory boreholes and trial pits</p> <p>r) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities</p> <p>s) erection of notices or advertisements</p> <p>and the terms "Commencement" "Commenced" and "Commences" shall be construed accordingly</p>
"the Councils"	means the Borough Council and the County Council
"County Council Financial Contributions"	Shall mean the Bus Stop and Signage Contribution, Early Years Childcare Provision Contribution, Primary School Education Contribution the TRO and Zoning Contribution and the Library Contribution
"Deed"	means this Deed of Agreement
"Development"	means the Development permitted under the Permission

“Dwelling”	means a dwelling forming part of the Development to be constructed in accordance with the Permission
“Expended Remediation Costs”	<p>means all:</p> <p>a) expended costs; and</p> <p>b) unexpended costs committed under contract</p> <p>that are associated with the treatment of contamination, disposal of contamination, remediation, obtaining necessary consents, certification reporting, monitoring and maintenance of the Property in order to comply with any of the conditions of the Permission concerning remediation of the Property from contamination and as evidenced by invoices, receipts, bank statements, contracts or other documents that may reasonably be requested by the Borough Council in writing</p>
“External Consultant”	Means an external consultant appointed by the Borough Council to independently assess the Remediation Report and if required the Viability Assessment
“Final Additional Profit”	means the sum notified by the Borough Council to be paid by the Owner pursuant to Paragraph 1.9 of Part 1 of the Third Schedule and Paragraph 1.1 of Part 2 of the Third Schedule or determined by the expert pursuant to Paragraph 1.10 of Part 1 of the Third Schedule and Paragraph 1.2 of Part 2 of the Third Schedule which shall be up to a maximum of £1,278,522 (one million two hundred and seventy eight thousand five hundred and twenty two pounds)
“Financial Contributions”	<p>means any or all of the following financial contributions defined in the Deed:</p> <p>Bus Stop and Signage Contribution</p> <p>Early Years Childcare Provision Contribution</p> <p>Primary School Education Contribution</p> <p>Stour and Orwell Estuaries Contribution</p> <p>TRO and Zoning Contribution</p> <p>NHS Contribution</p>

	<p>Library Contribution</p> <p>Affordable Housing Contribution</p>
Final Predicted Remediation Costs	means the total sum of the Predicted Remediation Costs as notified by the Borough Council to the Owner pursuant to Paragraph 1.4 of Part 1 of the Third Schedule or in the event of a dispute as determined by the expert pursuant to Clause 28
Late Payment Interest	means interest calculated at the rate of 4% above the base lending rate from time to time of Bank of England
“the Obligations”	means the obligations provisions requirements conditions or other burdens set out in this Deed
“Occupation”	means occupation for the purpose permitted by the 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 operations and “Occupy” and “Occupied” shall be construed accordingly
“the Permission”	means the planning permission granted pursuant to the Application
“the Plan”	means the plan annexed at the First Schedule hereto and marked “Plan”
“Predicted Remediation Costs”	means the anticipated total costs associated with remediating the Property from contamination in accordance with the Permission including the anticipated costs for discharging the remediation planning conditions, anticipated costs of investigating any potential contamination on the Property, treatment of contamination, disposal of contamination, the implementation of any proposed remediation strategy to remove such contamination from the Property and any anticipated costs associated with the reporting of, certification and long term monitoring and maintenance of the Property following the removal of such contamination. and for the avoidance of doubt any Expended Remediation Costs incurred up to the submission of the Predicted Remediation Costs may form part of the Predicted Remediation Costs

“the Property”	means the land to the West of Sandy Hill Lane, Ipswich in the County of Suffolk shown edged red on the Plan
“Remediation Figure”	means the sum of £3,450,000 (which for the avoidance of doubt shall not be BCIS Indexed)
“Remediation Report”	shall mean a report provided by the Owner setting out the Predicted Remediation Costs which shall include but not be limited to three quotations to be provided by appropriately qualified companies showing details and costings of the Predicted Remediation Costs
“Viability Assessment”	means a viability assessment (to be in the same format as the viability assessment previously submitted with the Application) which shall assess the financial viability of the Development to ascertain whether and what if any Additional Profit is likely to be generated as a result of the Development

Financial Contributions

“Bus Stop and Signage Contribution”	means the sum of two thousand five hundred pounds (£2500) BCIS Indexed
“Early Years Childcare Provision Contribution”	means the sum of fifty four thousand eight hundred and nineteen pounds (£54,819) BCIS Indexed
“Primary School Education Contribution”	means the sum of one hundred and twenty one thousand eight hundred and ten pounds (£121,810) BCIS Indexed
“Stour and Orwell Estuaries Contribution”	means the sum of twelve thousand seven hundred and fifty pounds (£12,750) BCIS Indexed
“TRO and Zoning Contribution”	means the sum of ten thousand pounds (£10,000) BCIS Indexed
“NHS Contribution”	means subject to the provisions of the Third Schedule the sum of thirty thousand nine hundred and twelve pounds (£30,912) BCIS Indexed
“Library Contribution”	means subject to the provisions of the Third Schedule the sum of eighteen thousand three hundred and sixty pounds (£18,360) BCIS Indexed

“Affordable Housing Contribution”	means subject to the provisions of the Third Schedule the sum of one million two hundred and twenty nine thousand two hundred and fifty pounds (£1,229,250.00) BCIS Indexed
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2. Where in this Deed reference is made to any clause, sub-clause, schedule, paragraph, sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause, sub-clause, schedule, paragraph, sub-paragraph or recital in this Deed.
3. Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
4. Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and where denoting natural persons shall include corporations and vice versa.
5. Any reference to any enactment regulation or order includes any statutory modification or re-enactment thereof 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 enactment regulation or order or deriving validity from it.
6. References in this Deed to the Councils shall where the context so admits include any public body in which the functions of the Councils at the date hereof under the enabling powers may for the time being be vested and any duly appointed servant agent or contractor of the Councils as the case may be or such other bodies.
7. Reference in this Deed to the Owner shall include successors in title and assigns to the Property or any part or parts thereof and to persons claiming an interest in land through or under it.
8. Headings in this Deed are not intended to be taken into account in its construction or interpretation.
9. “Including” means “including, without limitation”.
10. 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 by another person.
11. Where 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.

STATUTORY PROVISIONS AND COVENANTS

12. This Deed is made in pursuance of:-
 - Section 106 of the 1990 Act
 - Section 111 of the Local Government Act 1971
 - Section 1 of the Localism Act 2011

and all other enabling legislation.

13. The obligations created in the Second Schedule and the Third Schedule hereto are planning obligations insofar as they fall within the terms of Section 106 of the 1990 Act and are enforceable by the Councils as local planning authorities against the Owner and its successors in title.
14. Insofar as any of the covenants contained in this Agreement are not planning obligations within section 106 of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
15. This Deed is conditional upon:
 - (i) the grant of the Permission; and
 - (ii) the Commencement of Developmentsave for the provisions of this clause and clauses 20-31, 42, 43, 45 and 46 and any other relevant provisions which shall come into effect immediately upon completion of this Deed.
16. The Owner covenants with the Borough Council as set out in Part 2 of the Second Schedule and Part 1 and Part 2 of the Third Schedule so as to bind the Property and each and every part thereof.
17. The Owner covenants with the County Council as set out in Part 1 of the Second Schedule so as to bind the Property and each and every part thereof.
18. The Borough Council covenants with the Owner as set out in Part 1 and Part 2 of the Third Schedule and Part 1 of the Fourth Schedule.
19. The County Council covenants with the Owner as set out in Part 2 of the Fourth Schedule.

AGREEMENTS AND DECLARATIONS

20. This Deed shall bind the Property and every part thereof into whosoever hands the same may come and shall be enforceable against all persons that shall for the time being hold title to the same PROVIDED that no person shall be liable for any breach of an Obligation contained in this Deed occurring after he shall have parted with all interest in the Property save in respect of any breach at a time when they held any such interest.
21. This Deed shall be a local land charge and shall be registered as such.
22. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed (other than a successor in title to one of the original parties or their assignees) shall be entitled in that person's own right to enforce any provisions of this Deed pursuant to the provisions of the said Act.
23. The Owner shall pay to the Councils their reasonable legal costs incurred in connection with the negotiation, preparation, completion and registration of this Deed prior to the date hereof.

24. The Owner shall supply to the Borough Council and the County Council (within twenty-one days of the date of the Borough Council or County Council's written request to do so) such information as the Borough Council and/or County Council within its reasonable discretion considers it requires in order to determine whether the terms and conditions of this Deed are being observed.
25. The obligations in this Deed will not be enforceable against a statutory undertaker after the transfer of statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker.
26. Nothing in this Deed prohibits or limits the right to develop any part of the Property in accordance with a planning permission (other than the Permission) granted after the date of this Deed.
27. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Permission shall be quashed revoked or otherwise withdrawn or expires by effluxion of time for the Commencement Date or is modified (without the consent of the Owner) and the Borough Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed.
28. If any dispute shall arise between any of the parties to this Deed as to the Obligations under the terms of this Deed (other than a dispute touching or concerning the meaning or construction of this Deed) which shall include but not be limited to, the Predicted Remediation Costs, the Expended Remediation Costs and the Additional Profit the same and all matters in relation thereto shall in the absence of any contrary provision herein contained or contrary agreement between the parties to the dispute be referred to a single person appointed by the President for the time being of the Royal Town Planning Institute or President for the time being of the Royal Institution of Chartered Surveyors (as appropriate) on the application of either party and such person shall act as an expert and shall make a decision within 28 days and his decision shall be final and binding on the parties to the dispute and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.
29. The provisions of this clause shall not affect the ability of the Borough Council or County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.
30. Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Councils in the exercise of their statutory functions and the rights and powers duties and obligations of the Councils may be as fully and effectually exercised as if they were not a party to this Deed.
31. The Obligations contained in this Deed shall only be capable of being varied by a supplemental deed between the parties hereto or their respective successors in title or assigns made under section 106A of the 1990 Act.
32. If any Financial Contribution due under this Deed is paid late Late Payment Interest will be payable from the date payment is due until the date of payment.

33. The Financial Contributions shall (unless the context reads otherwise) be increased by an amount equivalent to the increase in the BCIS Index from the date hereof until the date on which such sum is payable using the formula $A = B \times C/D$ where:
- 33.1 A is the sum payable under this Deed;
 - 33.2 B is the original sum calculated as the sum payable;
 - 33.3 C is the BCIS Index for the month 2 months before the date on which the sum is payable;
 - 33.4 D is the BCIS Index for the month 2 months before the date of this Deed; and
 - 33.5 C/D is greater than 1
34. The Owner covenants from the date this Deed takes effect to allow the Councils and their respective duly authorised officers or agents at all reasonable times to enter into and upon and remain upon the Property for the purposes of monitoring compliance with the provisions of this Deed.
35. The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning of the Property under the terms of this Deed are hereby waived.
36. The Owner covenants and warrants to the Councils that they have full power to enter into this Deed and that there is no other person having a registered charge over or any registered binding interest in the Property, whose consent is necessary to make this Deed binding on the Property and all estates and interests therein.
37. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such validity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
38. No waiver (whether express or implied) by the Councils of any breach or default in performing or observing any of the covenants terms of conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Councils from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
39. The Owner covenants with the Councils to give each of them written notice of any change in ownership of any of its interests in the Property (save for disposals of individual Dwellings) occurring before all the obligations under this Deed have been discharged such notice to be given within twenty one (21) days of such change in ownership and shall 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 Property purchased by reference to a plan and a copy of the registered title and plan thereto.
40. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
41. The Owner covenants to inform the Borough Council and the County Council by way of written notice within seven (7) days following:
- (a) Commencement of Development;

- (b) Occupation of the first (1st) Dwelling;
 - (c) Occupation of the forty ninth (49th) Dwelling;
 - (d) Occupation of the seventieth (70th) Dwelling; and
 - (e) Completion of Development.
42. This Deed is governed by and interpreted in accordance with English law and shall be determined in the courts of England.
43. 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.
44. The Property shall be bound by the obligations contained in this Deed and any security of a mortgage or charge over the Property shall take effect subject to this Deed PROVIDED THAT a mortgagee or chargee, including any persons that may hold a mortgage or charge over the Property from time to time, shall otherwise have no liability under this Deed unless and until it takes possession of the Property in which case it too will be bound by the obligations affecting the part or parts of the Property as if it were a person deriving title from the Owner.
45. The obligations in this Deed shall not be enforceable against any individual owner, lessee or occupier of a Dwelling or any person deriving title from any such person.
46. The Councils covenant with the Owner to act reasonably, properly and diligently in exercising its discretion and discharging its functions under this Deed and in particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of this Deed, the Councils will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.

FIRST SCHEDULE

The Plan

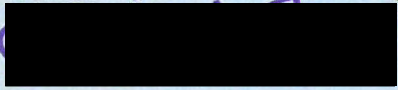
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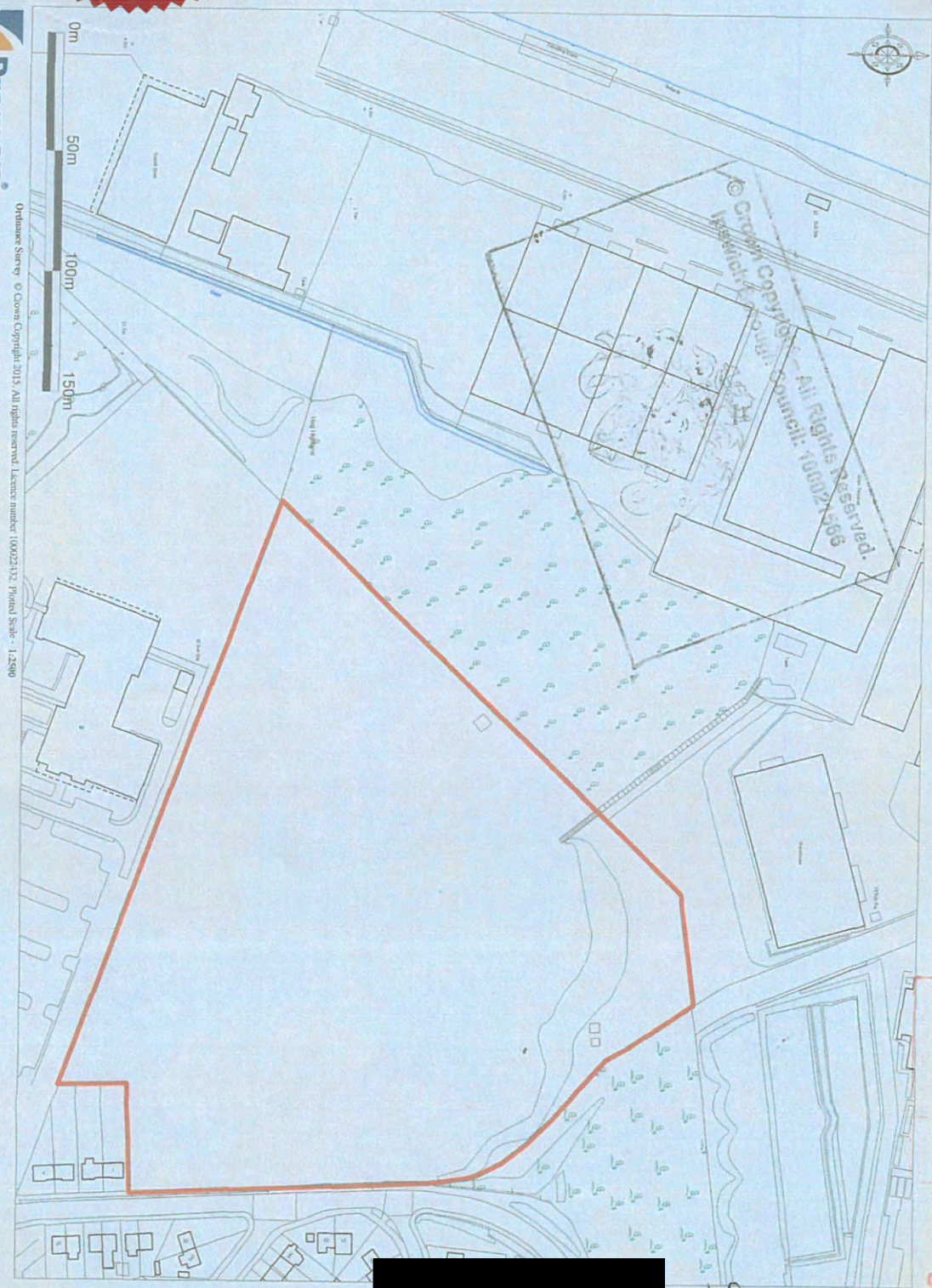
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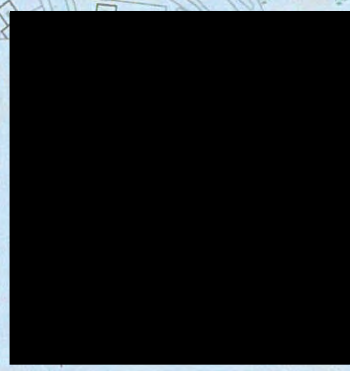
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Top Site, Sandhill Lane, Ipswich, IP3 0HY

Town Planning
10 Aug 2017
To:

171007691 OUT

CHEYENHAM
DEVELOPMENTS
TOP SITE LIMITED



DATE OFFICER
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SECOND SCHEDULE

The Planning Obligations

FINANCIAL CONTRIBUTIONS

PART 1

1 THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

TRO AND ZONING CONTRIBUTION

- 1.1 The Owner covenants to pay to the County Council the TRO and Zoning Contribution prior to the first Occupation of any Dwelling
- 1.2 The Owner hereby covenants not to Occupy or permit or allow Occupation of any Dwelling until the TRO and Zoning Contribution has been paid to the County Council

2 BUS STOP AND SIGNAGE CONTRIBUTION

- 2.1 The Owner covenants to pay to the County Council the Bus Stop and Signage Contribution prior to the first Occupation of any Dwelling.
- 2.2 The Owner hereby covenants not to Occupy or permit or allow Occupation of any Dwellings until the Bus Stop and Signage Contribution has been paid to the County Council

3 EARLY YEARS CHILDCARE PROVISION CONTRIBUTION

- 3.1 The Owner covenants to pay to the County Council the Early Years Childcare Provision Contribution prior to first Occupation of the 50th Dwelling
- 3.2 The Owner hereby covenants not to Occupy or permit or allow Occupation of more than 49 Dwellings until the Early Years Childcare Provision Contribution has been paid to the County Council

4 PRIMARY SCHOOL EDUCATION CONTRIBUTION

- 4.1 The Owner covenants to pay to the County Council the Primary School Education Contribution prior to first Occupation of the 50th Dwelling
- 4.2 The Owner hereby covenants not to Occupy or permit or allow Occupation of more than 49 Dwellings until the Primary School Education Contribution has been paid to the County Council

PART 2

1 THE OWNER'S COVENANTS WITH THE BOROUGH COUNCIL

STOUR AND ORWELL ESTUARIES CONTRIBUTION

- 1.1 The Owner covenants to pay to the Borough Council the Stour and Orwell Estuaries Contribution prior to Occupation of the 50th Dwelling
- 1.2 The Owner hereby covenants not to Occupy more than 49 Dwellings until the Stour and Orwell Estuaries Contribution has been paid to the Borough Council

THIRD SCHEDULE

ADDITIONAL CONTRIBUTIONS AND VIABILITY

PART 1

THE OWNER'S COVENANTS WITH THE BOROUGH COUNCIL

- 1 The Owner and Borough Council covenant as detailed below:
 - 1.1 The Owner covenants not to Commence the Development until they have provided to the Borough Council the Remediation Report.
 - 1.2 The Borough Council will be entitled to appoint an External Consultant to review and advise on the Remediation Report and the Owner will pay the reasonable and proper costs incurred by the External Consultant within 21 days of receiving a written invoice from the Borough Council setting out the details of the works undertaken and costs involved.
 - 1.3 The Borough Council shall within 21 days of receipt of the information referred to in Paragraph 1.1 of Part 1 of this Third Schedule review and inform the Owner whether the Owner has submitted sufficient information to comply with the requirements of paragraph 1.1 of Part 1 of this Third Schedule and advise the Owner as to what further information is required if any.
 - 1.4 Within 56 days of receiving the Remediation Report or any additional information required pursuant to paragraph 1.3 of Part 1 of this Third Schedule the External Consultant or the Borough Council as the case may be complete its review of the Remediation Report and shall notify the Owner in writing what it considers the **Final Predicted Remediation Costs** to be and in the event that the Owner disputes the Final Predicted Remediation Costs they may refer the matter to be dealt with under Clause 28 and the expert appointed pursuant to Clause 28 will determine the Final Predicted Remediation Costs.
 - 1.5 If the Final Predicted Remediation Costs exceeds the Remediation Figure or is up to £1,000 less than the Remediation Figure the Owner shall not be required to comply with any further obligations other than those referred to in the Second Schedule and the Owner shall be released from its obligations in Parts 1 and 2 of this Third Schedule.
 - 1.6 If the Final Predicted Remediation Costs are lower than the Remediation Figure by more than £1000, then the Owner shall submit a Viability Assessment to the Borough Council no later than the Occupation of the 50th Dwelling.
 - 1.7 The Borough Council will be entitled to appoint an External Consultant to review and advise on the Viability Assessment and the Owner will pay the reasonable and proper costs incurred by the External Consultant within 35 days of receiving a written invoice by the Borough Council setting out the details of the works undertaken and costs involved.
 - 1.8 The Borough Council shall within 25 days of receipt of the information referred to in Paragraph 1.6 of Part 1 of this Third Schedule review and inform the Owner whether the Owner has submitted sufficient information to comply with the requirements of paragraph 1.6 of Part 1 of this Third Schedule and advise the Owner as to what further information is required if any.

- 1.9 Within 56 days of receiving the Viability Assessment or any additional information required pursuant to paragraph 1.8 of Part 1 of this Third Schedule the External Consultant or the Borough Council as the case may be complete its review of the Viability Assessment and shall notify the Owner in writing whether it considers that the Development shall generate the Additional Profit and what it considers the **Final Additional Profit** to be.
- 1.10 In the event that the Owner does not agree that there shall be an Additional Profit or with the sum of the Final Additional Profit as identified in paragraph 1.9 of Part 1 of this Third Schedule the Owner may refer the dispute to be dealt with under Clause 28 and the expert appointed under Clause 28 will determine whether the Development will generate the Additional Profit and the Final Additional Profit.
- 1.11 In the event that the Borough Council fails to confirm whether it has sufficient information or fails to request additional information under Paragraphs 1.3 and 1.8 of Part 1 of this Third Schedule or the Borough Council fails to notify the Owner under Paragraphs 1.4 and 1.9 of Part 1 of this Third Schedule then the Owner may refer the matter to an expert under Clause 28.

PART 2

THE OWNER'S COVENANTS WITH THE BOROUGH COUNCIL

- 1 The Owner and the Councils further covenant as follows:
- 1.1 If the Borough Council notifies the Owner that there is an Additional Profit and Final Additional Profit in accordance with Paragraph 1.9 of Part 1 of this Third Schedule and the Owner does not dispute the Additional Profit or Final Additional Profit then the Owner shall pay the Final Additional Profit to the Borough Council towards the NHS Contribution, the Library Contribution and the Affordable Housing Contribution such contributions to be paid no later than Occupation of the 70th Dwelling
- 1.2 If the Owner disputes the Additional Profit or Final Additional Profit pursuant to Paragraph 1.10 of Part 1 of this Third Schedule, and pursuant to Clause 28 the expert determines there is Additional Profit, then the Owner shall pay the Final Additional Profit as determined by the expert to the Borough Council towards the NHS Contribution, the Library Contribution and the Affordable Housing Contribution such contributions to be paid no later than Occupation of the 70th Dwelling.
- 1.3 In the event that the Final Additional Profit is not sufficient to pay the total amounts of the NHS Contribution, the Library Contribution and the Affordable Housing Contribution, then the Owner will pay the Final Additional Profit to the Borough Council such contributions to be paid no later than Occupation of the 70th Dwelling and the Borough Council shall allocate the above mentioned contributions in the following order of priority:
- 1.3.1 the first allocation of the Final Additional Profit shall be applied to the NHS Contribution;
- 1.3.2 the second allocation of the Final Additional Profit shall be paid to the County Council to be applied to the Library Contribution; and
- 1.3.3 any remaining Final Additional Profit shall be applied to the Affordable Housing Contribution

and upon receipt of the Final Additional Profit by the Owner to the Borough Council the Owner shall be released from its obligations and have no further liability in respect of payment of the Additional Profit, the Final Additional Profit, NHS Contribution, Library Contribution and Affordable Housing Contribution and the Borough Council shall not seek to recover any further monies in respect of the Additional Profit, NHS Contribution, Library Contribution and Affordable Housing Contribution

- 1.4 If the outcome of the Viability Assessment as notified by the Borough Council or as determined by the expert pursuant to Paragraph 1.10 of Part 1 of this Third Schedule and Clause 28 is that there is no Additional Profit then the Owner shall not be required to pay the Final Additional Profit, NHS Contribution, the Library Contribution and the Affordable Housing Contribution and the Borough Council shall not seek to recover any such contributions from the Owner
- 1.5 If the Final Additional Profit is in excess of the total NHS Contribution, Library Contribution and Affordable Housing Contribution, then the Owner shall not be obliged to pay any part of the Final Additional Profit to Borough Council in excess of the NHS Contribution, Library Contribution and Affordable Housing Contribution.

FOURTH SCHEDULE

PART 1

Borough Council Covenants

- 1 The Borough Council covenants with the Owner to issue the Permission within 5 days of the date of this Deed
- 2 The Borough Council covenants to use the Stour and Orwell Estuaries Contribution towards the provision of environmental and ecological mitigation measures to mitigate the impact of the Development upon the Stour and Orwell Estuaries SPA
- 3 The Borough Council covenants to use the NHS Contribution towards the delivery of primary healthcare facilities serving the Property and which shall mitigate the impact of the Development or to pay the NHS Contribution to a third party upon written confirmation by such party that if they do not spend the NHS Contribution within 10 years of receipt then the third party shall within 1 year of the request by the Borough Council repay any unspent amount of the NHS Contribution to the Borough Council together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end.
- 4 The Borough Council covenants to use the Affordable Housing Contribution towards the cost of providing affordable housing units for mixed housing developments in Ipswich which shall be used for the purpose of delivery of affordable housing within the Borough of Ipswich, as required by policy CS12 of the Core Strategy and Policies DPD Review (2017)
- 5 The Borough Council covenants to send the Library Contribution to the County Council within 2 calendar months of receipt of the same from the Owner.
- 6 The Borough Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the Stour and Orwell Estuaries Contribution the NHS Contribution and Affordable Housing Contribution are paid as appropriate within a further period of one (1) year pay to any person such amount of the Stour and Orwell Estuaries Contribution the NHS Contribution and Affordable Housing Contribution as appropriate paid by that person in accordance with the provisions of this Deed which has not been committed or expended or passed to a third party by the Borough Council or which in the case of the NHS Contribution has been returned by the third party to the Borough Council in accordance with the provisions of this Deed together with any interest accrued on the amount to be repaid at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period by any party to this agreement. Such payment shall be made within twenty eight (28) days of such request.
- 7 Upon receipt of a written request by the Owner the Borough Council shall provide written confirmation to the Owner as to which obligations under this Deed have been discharged.

PART 2

County Council Covenants

1 APPLICATION OF CONTRIBUTIONS

- 1.1 The County Council covenants to use the TRO and Zoning Contribution towards a 20mph Zone Order and associated traffic regulation orders including associated legal costs and officer time in order to achieve improved highway operational efficiency in the vicinity of the Development.
- 1.2 The County Council covenants to use the Primary School Education Contribution towards the improvement and enhancement of Cliff Lane Primary School or other primary schools serving the Development.
- 1.3 The County Council covenants to use the Early Years Childcare Provision Contribution towards the improvement and enhancement of early years provision serving the Development.
- 1.4 The County Council covenants to use the Bus Stop and Signage Contribution towards the improvement and enhancement of public transport infrastructure in the vicinity of the Development.

2 REPAYMENT OF FINANCIAL CONTRIBUTIONS

- 2.1 The County Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the County Council Financial Contributions were paid within a further period of one (1) year pay to any person such amount of the County Council Financial Contributions paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued on the amount to be repaid at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period by any party to this agreement. Such payment shall be made within twenty eight (28) days of such request.
- 2.2 When the County Council Financial Contributions (as applicable) paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10) years of the payment of that sum within a further period of one (1) year notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to
- 2.3 Upon receipt of a written request by the Owner, the County Council shall provide written confirmation to the Owner as to which obligations under this Deed have been discharged.

IN WITNESS WHEREOF the parties have executed this Deed the day and year first hereinbefore written

THE COMMON SEAL OF IPSWICH BOROUGH COUNCIL was hereunto affixed in the presence of:



Authorized Signatory

A handwritten signature in blue ink, appearing to be 'J.R. 7-1'.

Authorized Signatory

)
)
)



THE COMMON SEAL OF SUFFOLK COUNTY COUNCIL was hereunto affixed in the presence of:



Authorized Signatory

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)



Executed as a deed by Cheltenham Developments
Top Site Limited, a company incorporated in Guernsey,
acting by Leslie Frederick Aldis and Linda Irene Aldis
who, in accordance with the laws of that territory,
are acting under the authority of the company.

Signature in the name of the company

CHELTEHAM DEVELOPMENTS TOP SITE LIMITED
Cheltenham Developments Top Site Limited

Signature of

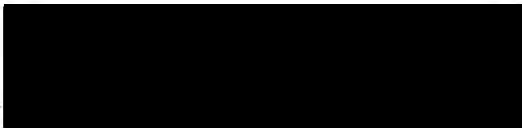
Leslie Frederick Aldis

.....

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Signature of

Linda Irene Aldis

.....

.....

Authorised signatories

