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| <p><b>"Occupation"</b></p>                    | <p>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</p>  |
| <p><b>"Original Viability Assessment"</b></p> | <p>means the original viability assessment produced by S106 Affordable Housing dated 25<sup>th</sup> April 2019 and submitted by the Owner to the Borough Council as part of the Application.</p>  |
| <p><b>"the Permission"</b></p>                | <p>means the planning permission granted pursuant to the Application in the form annexed to this Deed</p>  |
| <p><b>"the Plan"</b></p>                      | <p>means the plan annexed at the First Schedule hereto and marked "Plan"</p>   |
| <p><b>"POS Contribution"</b></p>              | <p>means a sum calculated in accordance with the terms of this Agreement not exceeding £240,414 for the provision and maintenance of play areas, youth areas, amenity land, sports land, natural land, parks and gardens within the Borough in the vicinity of the application site.</p>   |
| <p><b>"the Property"</b></p>                  | <p>means the Land/Buildings at 22 Stoke Street and land to the rear of 14-22 Stoke Street Ipswich in the County of Suffolk shown edged red on the Plan</p>   |
| <p><b>"Updated Viability Assessment"</b></p>  | <p>means an update to the Original Viability Assessment and to be in exactly the same terms as the Original Viability Assessment the of which is to assess the financial viability of the Development to ascertain whether the Benchmark Land value has been exceeded by 20% or more and whether there will be a requirement to provide the Affordable Housing Contribution and the POS Contribution</p> |
| <p><b>"Working Days"</b></p>                  | <p>Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England</p>   |

### Financial Contributions

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| <b>Early Years contribution</b>                                | Means the sum of £24,999 (twenty four thousand nine hundred and ninety nine pounds) BICS Indexed                    |
| <b>Primary Education Contribution</b>                          | Means the sum of £48,724.00 (forty eight thousand seven hundred and twenty four pounds) BICS Indexed                |
| <b>Highways Contribution</b>                                   | Means the sum of £11,500 (eleven thousand five hundred pounds) BICS Indexed   |
| <b>Library Contribution</b>                                    | Means the sum of £496 (four hundred and ninety six pounds) BICS Indexed   |
| <b>Recreational Avoidance Mitigation Strategy Contribution</b> | Means the sum of £3778.59 (three thousand seven hundred and seventy eight pounds and fifty nine pence) BCIS Indexed |

- 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 Development
- save 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 the Second 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 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 of the Third Schedule.
- 19 The County Council covenants with the Owner as set out in Part 2 of the Third 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 covenants to pay to the County Council's £412.00 (four hundred and twelve pounds) on completion of this Deed towards the costs incurred in monitoring the obligations contained in this Deed
- 25 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.
- 26 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.
- 27 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.
- 28 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.

- 29 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) 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.
- 30 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.
- 31 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.
- 32 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.
- 33 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.
- 34 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:
- 34.1 A is the sum payable under this Deed;
- 34.2 B is the original sum calculated as the sum payable;
- 34.3 C is the BCIS Index for the month 2 months before the date on which the sum is payable;
- 34.4 D is the BCIS Index for the month 2 months before the date of this Deed; and
- 34.5 C/D is greater than 1
- 35 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.

- 36 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.
- 37 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.
- 38 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.
- 39 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.
- 40 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.
- 41 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 42 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 (1<sup>st</sup>) Dwelling;
  - (c) first Occupation of the final Dwelling
- 43 This Deed is governed by and interpreted in accordance with English law and shall be determined in the courts of England.
- 44 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.
- 45 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.

- 46 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.
- 47 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.

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

**FIRST SCHEDULE**

**The Plan**



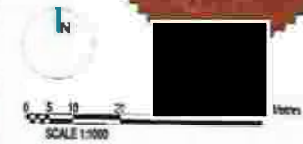
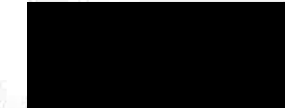
[Redacted]  
**AUTHORISED OFFICER**  
(M. T. FORD)

[Redacted]  
**AUTHORISED OFFICER**  
CLARE OWSON-DUNN



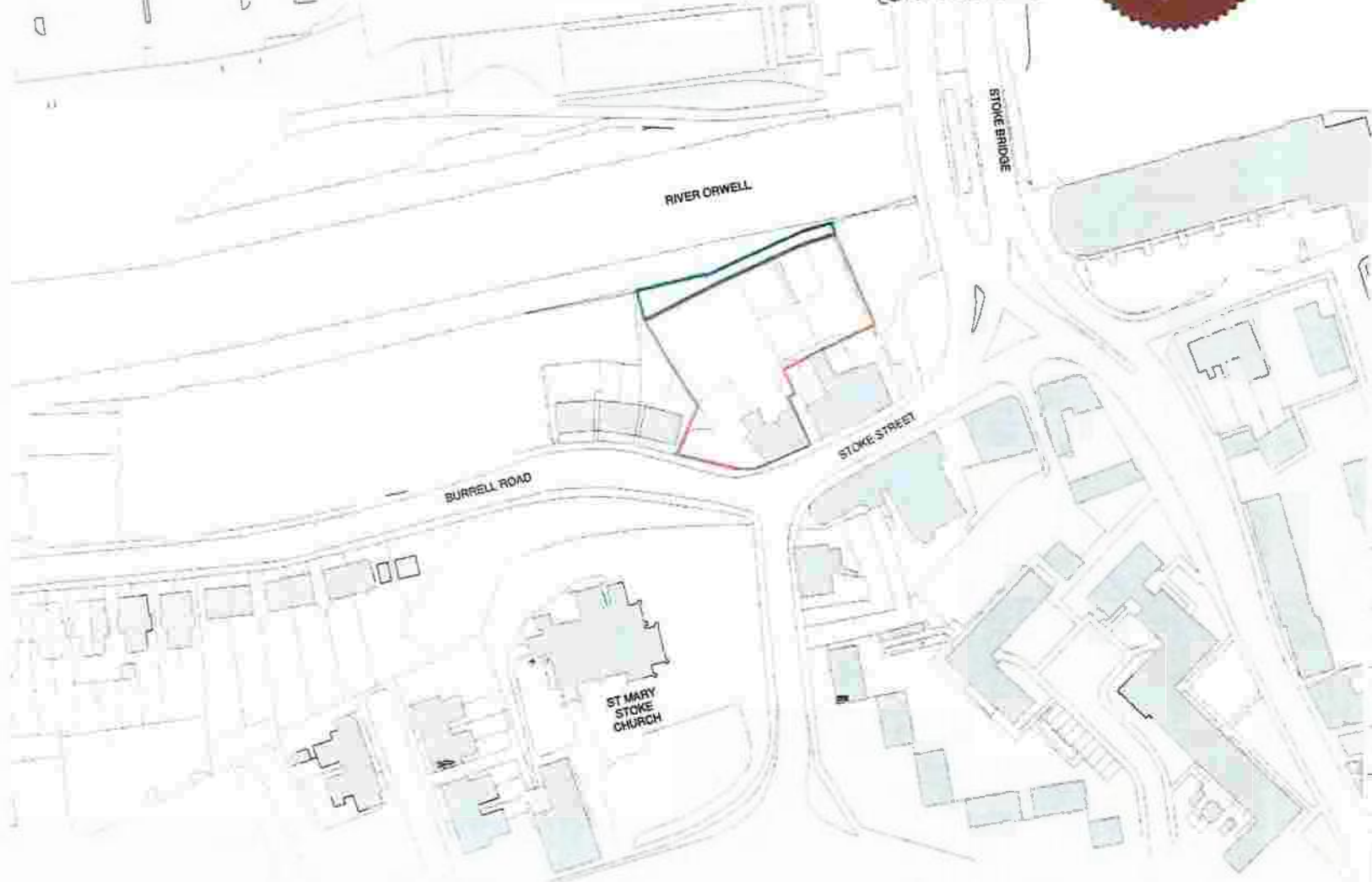
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P01.1

| Revisions |                      | DATE     | BY |
|-----------|----------------------|----------|----|
| P01       | PLANNING APPLICATION | 11/04/19 | BW |
| P02       | AMENITY PROVISION    | 30/07/19 | BW |



Maybush Developments  
Mixed Use Development, Stoke Street & Burrell Road

Site Location Plan  
363.7- 0100 P02  
1:1000 @ A3 PLANNING



## **SECOND SCHEDULE**

### **The Planning Obligations**

#### **PART 1**

#### **THE OWNER'S COVENANTS WITH THE BOROUGH COUNCIL**

##### **1. AMENITY SPACE and ADDITIONAL PATHWAY**

- 1.1 The Owner covenants to lay out and complete the Amenity Space prior to Occupation of the first Dwelling in accordance with details to be approved in writing by the Borough Council.
- 1.2 The Owner covenants not to Occupy or permit Occupation of the 1<sup>st</sup> Dwelling until the Amenity Space has been completed to the Borough Council's satisfaction.
- 1.3 The Owner covenants not to open or enable access to or use of the Amenity Space by the public until such time as the Additional Pathway within the whole of the Adjacent Development is made up in its entirety, brought into use or such other timescale to be agreed in writing by the Borough Council and until such time the Owner further covenants to provide such signage and other means to deter the public from entering or accessing the Amenity Space.
- 1.4 The Owner covenants without demand for payment or restriction or obligation upon any person, to open and enable access and use of the Amenity Space by the public following completion of the Additional Pathway within the Adjacent Development, or the agreed timescale in relation to the Adjacent Development as referred to in 1.3 above.
- 1.5 The Owner covenants to maintain to an adoptable standard at its own expense the Amenity Space for a period of 10 years or until such time (whichever is the later) the Amenity Space is acquired by the Borough Council, and immediately following notification of completion of the transfer to the Borough Council, the Owner covenants to pay to the Borough Council the Maintenance Charge.

##### **2 AFFORDABLE HOUSING AND VIABILITY**

The Owner covenants as follows:

- 2.1 Within 10 Working Days of the Completion Date to notify the Borough Council in writing of Completion of all the Market Dwellings together with evidence demonstrating the same.
- 2.2 Within 3 months of the Completion Date the Owner shall at its own cost prepare an Updated Viability Assessment and submit the same to the Borough Council for its consideration.
- 2.3 The Borough Council will be entitled to appoint an External Consultant to review and advise on the Updated Viability Assessment and the Owner will pay the reasonable and proper costs incurred by the External Consultant within 21 days of receiving a written

invoice setting out the details of the works undertaken and costs involved.

2.4 Within 56 Working Days of receiving the Updated Viability Assessment or any additional information pursuant to paragraph 2.4 above the External Consultant or the Borough Council as the case may be shall complete its review of the Updated Viability Assessment and shall inform the Owner as to whether or not it considers that the Benchmark Land Value has been exceeded by more than 20%.

2.5 If the outcome of the Updated Viability Assessment is that the Benchmark Land Value has been exceeded by 20% or more then the Owner shall pay 50% of the amount by which the Benchmark Land Value has exceeded to the Borough Council which shall be paid towards the Affordable Housing Contribution and the POS Contribution, provided that such amount payable shall not exceed the total of the Affordable Housing Contribution and the POS Contribution and further provided such payment to be made no later than six (6) months from the date that the Borough Council has agreed that the Benchmark Land Value has been exceeded by more than 20% pursuant to paragraph 2.4 of this Deed

### **3 RECREATIONAL AVOIDANCE MITIGATION STRATEGY CONTRIBUTION**

3.1 The Owner covenants to pay the Borough Council the Recreational Avoidance Mitigation Strategy Contribution prior to the Commencement of Development.

3.2 The Owner covenants not to Commence the Development until the Recreational Avoidance Mitigation Strategy has been paid to the Borough Council.

## **PART 2**

### **THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL**

#### **1. EARLY YEARS CONTRIBUTION**

1.1 The Owner covenants to pay to the County Council the Early Years Contribution prior to the first Occupation of the first (1<sup>st</sup>) Dwelling

1.2 The Owner covenants not to Occupy or permit Occupation of any Dwellings until the Early Years Contribution has been paid to the County Council.

#### **2. PRIMARY EDUCATION CONTRIBUTION**

2.1 The Owner covenants to pay to the County Council the Early Years Contribution prior to the first Occupation of the first (1<sup>st</sup>) Dwelling

2.2 The Owner hereby covenants not to Occupy or permit Occupation of any Dwellings until the Primary Education Contribution has been paid to the County Council.

**3. HIGHWAYS CONTRIBUTION**

- 3.1 The Owner covenants to pay to the County Council the Highways Contribution prior to the first Occupation of the first (1<sup>st</sup>) Dwelling
- 3.2 The Owner hereby covenants not to Occupy or permit Occupation of any Dwellings until the Highways Contribution has been paid to the County Council.

**4. LIBRARY CONTRIBUTION**

- 4.1 The Owner covenants to pay to the County Council the Library Contribution prior to the first Occupation of the first (1<sup>st</sup>) Dwelling
- 4.2 The Owner hereby covenants not to Occupy or permit Occupation of any Dwellings until the Library Contribution has been paid to the County Council.

**THIRD SCHEDULE**

**The Council Covenants**

**PART 1**

**THE BOROUGH COUNCIL COVENANTS**

1. To hold the Affordable Housing Contribution in an interest bearing account and apply it and any interest accrued only towards either the provision of Affordable Housing within the borough of Ipswich.
2. In the event that the Affordable Housing Contribution or any part of it has not been committed (by way of a contract or by the expenditure of the monies) to the provision of the facilities referred to in paragraph 1 above within 5 years of payment then the Borough Council will repay to the Owner so much of the contribution as shall remain uncommitted together with any accrued interest thereon
3. To hold the POS Contribution in an interest bearing account and apply it and any interest accrued only towards the provision and maintenance of play areas, youth areas, amenity land, sports land, natural land, parks and gardens within the Borough in the vicinity of the application site.
4. In the event that the POS Contribution or any part of it has not been committed (by way of a contract or by the expenditure of the monies) to the provision of the facilities referred to in paragraph 3 above within 5 years of payment then the Borough Council will repay to the Owner so much of the contribution as shall remain uncommitted together with any accrued interest thereon.