

- 1.11 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.12 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.13 A reference to writing or written does not include faxes or e-mail.
- 1.14 References to clauses, Schedules and plans (unless the context otherwise requires) are to clauses, Schedules and plans of this deed.
- 1.15 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.16 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 1.17 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. ENABLING PROVISIONS

- 2.1 This Deed is made pursuant to Section 106A of the 1990 Act, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and all other statutory and enabling powers

3. CONDITIONALITY

- 3.1 With the exception of Clauses 6, 7 and 9 of this Deed (which shall come into effect on the completion of this Deed) none of the terms of this Deed shall come into effect until:-
 - 3.1.1 the Borough Council has granted the Second Planning Permission; and
 - 3.1.2 the Second Owner has Commenced development pursuant to the Second Planning Permission

4. VARIATIONS TO THE PRINCIPAL AGREEMENT

The following variations shall be made to the Principal Agreement which shall be read and construed and shall take effect as follows:

- 4.1 Under Clause 1, Definitions, of the Principal Agreement the following definitions shall be inserted:

"the Original Planning Permission"	means the planning permission subject to conditions as was granted pursuant to the Application
"the Second Planning Application"	means the application submitted by the

	Second Owner to the Borough Council with reference IP/22/00324/FUL to develop that part of the Property being 22 Stoke Street as edged red on the plan attached to this Deed at Annex A with reference "A 12,530"
"the Second Planning Permission"	means the planning permission subject to conditions that may be granted by Ipswich Borough Council following the determination of the Second Planning Application and substantially in the form of the draft annexed to this Deed at Annex C

- 4.2 Under Clause 1.1, Definitions, of the Principal Agreement the definitions of 'the Permission', the Plan' and 'the Recreational Avoidance Mitigation Strategy Contribution' shall be deleted and the following definition shall be added:

"the Permission"	Means (as the context requires) a) The Original Planning Permission; or b) the Second Planning Permission.
"the Plans"	Means the two plans annexed at the First Schedule hereto and marked "3637-0100 P02" and "A 12,530" and the term 'Plan' set out within this Deed shall be construed as being one or both of the Plans as the context requires
"the Recreational Avoidance Mitigation Strategy Contribution"	Means the sum of £4,144.26 (four thousand one hundred and forty-four pounds and twenty-six pence) BCIS Indexed

- 4.3 The plan with reference "A 12,530" annexed hereto at Annex A shall be inserted as a plan in the First Schedule within the Principal Agreement.
- 4.4 The draft Second Planning Permission annexed in Annex C hereto shall be inserted as the Second Annex within the Principal Agreement.

5. CONTINUATION OF THE AGREEMENT

- 5.1 The terms of the Principal Agreement shall continue in full force and effect as amended by this Deed and are binding subject to the provisions of this Deed and such terms as so supplemented and varied shall for all purposes (including but without limitation for the purposes of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989) be deemed to be incorporated into the Principal Agreement.
- 5.2 The First Owner and the Second Owner covenant to observe and perform the covenants restrictions and obligations contained in the Principal Agreement as varied by this Deed.

6. INVALIDITY OF CERTAIN PROVISIONS

- 6.1 If any term of this Deed or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable the same shall be severable and the remainder of this Deed as to the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Deed shall be valid and enforced to the fullest extent permitted by law

7. REGISTRATION AS LOCAL LAND CHARGE

- 7.1 The covenants in the Principal Agreement as varied by this Deed are planning obligations for the purposes of Section 106 and Section 106A of the 1990 Act and as such this Deed shall be registered in the Borough Council's register of Local Land Charges
- 7.2 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith cancel all the entries made in the register of local land charges in respect of this Deed.

8. LEGAL FEES

- 8.1 The Second Owner covenants to pay to the Borough Council and to the County Council prior to completion of this Deed their reasonable legal costs properly incurred in the negotiation, preparation and execution of this Deed.

9. THIRD PARTY RIGHTS

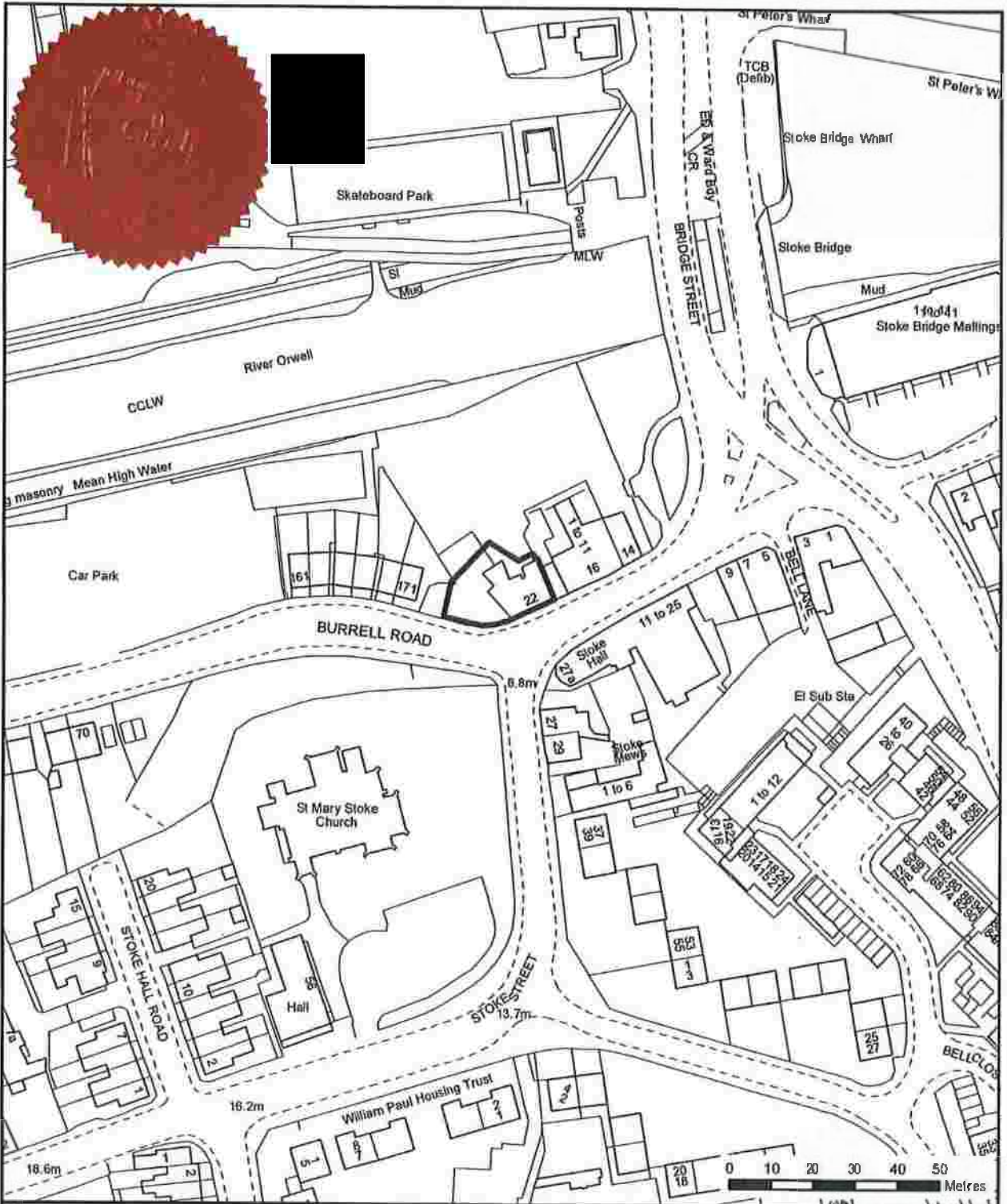
- 9.1 A person who is not a party to this deed shall not have any rights under, or in connection with, it by virtue of the Contracts (Rights of Third Parties) Act 1999.

10. GOVERNING LAW

- 10.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS whereof this Deed was duly executed and delivered the day and year first before written

Annex A
PLAN "A 12,530"



IPSWICH BOROUGH COUNCIL
DEVELOPMENT MANAGEMENT

IP/22/00324/FUL
Former Defiance Public House
22 Stoke Street, Ipswich IP2 8B



Number **A 12,530**

Scale **1:1,250**

Date **August 2022**

Annex B
Principal Agreement

LC254

DATE 06th August 2020

(1) IPSWICH BOROUGH COUNCIL

and

(2) SUFFOLK COUNTY COUNCIL

and

(3) MAYBUSH DEVELOPMENTS LTD

AGREEMENT

Pursuant to Section 106 Town and Country Planning Act 1990
as amended and other statutory provisions
relating to Land/Buildings at 22 Stoke Street
and land to the rear of 14-22 Stoke Street Ipswich

Legal Services
Ipswich Borough Council
Grafton House
15-17 Russell Road
Ipswich
Suffolk
IP1 2DE
IP0007.543

THIS DEED OF AGREEMENT is made the ^{06th} day of August 2020

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. **MAYBUSH DEVELOPMENTS LTD** (Co. Regn. No 05092994) whose registered office is at C/O Haslers, Old Station Road, Loughton, Essex IP10 4PL (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 and by whom the obligations contained in this Deed are enforceable.
- (C) Part of the Property comprises land registered at HM Land Registry under title number SK261341 and part of the property is occupied by the Owner by means of adverse possession
- (D) The Owner is the freehold owner of part of the Property free from encumbrances and is in control of that part of the Property which is unregistered at HM Land Registry.
- (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
"Additional Pathway"	Means that pathway to be created as a footpath link along the riverfront and situated within the Development and the Adjacent Development
"Adjacent Development"	means a development that includes the Additional Pathway to the west of the Amenity Space and a development that includes the Additional Pathway to the east of the Amenity Space both of which being on land allocated for development within the Ipswich Site Allocations and Policies DPD Review (2017) Site Refer IP031.
"Affordable Housing Unit"	Means a house that is affordable to those people who cannot afford to rent or buy housing generally available on the open market
"Affordable Housing Contribution"	means a commuted sum calculated in accordance with the terms of this Agreement not exceeding £250,000 (two hundred and fifty thousand pounds) to cover the cost of providing no less than 5 Affordable Housing Units based on the BCIS Index (median figure) for mixed housing developments in Ipswich which shall be used for the purpose of delivering Affordable Housing within the Borough of Ipswich
"Amenity Space"	means the amenity land and pathway to be provided as part of the Development on the land edged blue on Plan to provide amenity land with landscaping and street furniture
"the Application"	means the planning application given reference IP/19/00369/FUL submitted by the Owner and registered by the Borough

C o u n c	Council on 15 th April 2019
"Benchmark Land Value"	means the value of the Property at the date of the Updated Viability Assessment based on the formula set out in the Original Viability Assessment
"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 34 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) the demolition of any existing buildings or structures b) site investigations or surveys c) site clearance d) archaeological investigations e) investigations for the purpose of assessing ground conditions f) remedial work in respect of any contamination or other adverse ground conditions g) diversion and laying of services h) erection of any temporary means of enclosure

	<p>i) the temporary display of site notices or advertisements</p> <p>and the terms "Commencement" "Commenced" and "Commences" shall be construed accordingly</p>
"Completed"	means the completion of the sale of the final Dwelling on the Property and "Complete" and "Completed" shall be construed accordingly
"Completion Date"	means the date on which all Market Dwellings have been Completed
"the Councils"	means the Borough Council and the County Council
"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
"External Consultant"	means the external consultant appointed by the Borough Council to independently assess the Updated Viability Assessment
"Financial Contributions"	means any or all of the following financial contributions defined in the Deed; Early Years Contribution; Primary Education Contribution; Highways Contribution; Library Contribution; and Recreational Avoidance and Mitigation Strategy Contribution
"Late Payment Interest"	means interest calculated at the rate of 4% above the base lending rate from time to time of Bank of England
"Maintenance Charge"	means the sum of Eighteen Thousand Eight Hundred and Ninety Nine Pounds (£18,899) towards the maintenance costs for the Borough Council to maintain the Amenity Space BCIS Indexed
"Market Dwellings"	means a Dwelling other than an Affordable Housing Unit constructed to the Permission
"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
"Original Viability Assessment"	means the original viability assessment produced by S106 Affordable Housing dated 25 th April 2019 and submitted by the Owner to the Borough Council as part of the Application.
"the Permission"	means the planning permission granted pursuant to the Application in the form annexed to this Deed
"the Plan"	means the plan annexed at the First Schedule hereto and marked "Plan"
"POS Contribution"	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.
"the Property"	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
"Updated Viability Assessment"	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
"Working Days"	Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England

Financial Contributions

Early Years contribution	Means the sum of £24,999 (twenty four thousand nine hundred and ninety nine pounds) BICS Indexed
Primary Education Contribution	Means the sum of £48,724.00 (forty eight thousand seven hundred and twenty four pounds) BICS Indexed
Highways Contribution	Means the sum of £11,500 (eleven thousand five hundred pounds) BICS Indexed
Library Contribution	Means the sum of £496 (four hundred and ninety six pounds) BICS Indexed
Recreational Avoidance Mitigation Strategy Contribution	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.