

DATE

13th May

2022

(1) IPSWICH BOROUGH COUNCIL

and

(2) SUFFOLK COUNTY COUNCIL

and

(3) PLUTUS (IPSWICH) LIMITED

and

(4) REFLEX BRIDGING LIMITED

AGREEMENT

Pursuant to Section 106 Town and Country Planning Act 1990
as amended and other statutory provisions
relating to Land at Grafton Way, Ipswich

Legal Services
Ipswich Borough Council
Grafton House
15-17 Russell Road
Ipswich
Suffolk
IP1 2DE
Reference: IP7.806

THIS DEED OF AGREEMENT is made the 13th day of May 2022

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. **PLUTUS (IPSWICH) LIMITED** (Company registration number 10209541) whose registered office is at 3rd Floor Sterling House, Langston Road, Loughton, Essex IG10 3TS (hereinafter called "**the Owner**")
4. **REFLEX BRIDGING LIMITED** (Company registration number 07681831) of 3rd Floor Sterling House, Langston Road, Loughton, Essex IG10 3TS (hereinafter called "**the Mortgagee**")

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 number **SK331116**.
- (D) The **Owner** is the freehold owner of the **Property** subject to: (1) a lease of an electricity sub-station dated 31 December 1985 for a term of 60 years; and (2) restrictions against the title number **SK331116** in favour of **Tesco Stores Limited**. The **Owner** confirms it has obtained consent of the interested parties to enter into this deed.
- (E) The **Mortgagee** has a registered charge dated 21 December 2021 over the **Property**.
- (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
"the Application"	means the planning application given reference 19/00148/OUT submitted by the Owner and registered by the Borough Council on 13 February 2019
"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 Ad PROVIDED THAT the following operations shall not constitute a material operation for the purposes of this agreement:-</p> <p>(a) the demolition of any existing buildings or structures</p> <p>(b) site investigations or surveys</p> <p>(c) site decontamination</p>

	<p>(d) archaeological works</p> <p>(e) excavation works</p> <p>(f) the clearance or re-grading of the Site</p> <p>(g) the erection of hoardings and fences</p> <p>(h) works connected with infilling</p> <p>(i) works for the provision or diversion of drainage or mains services to prepare the Site for development <u>and/or</u></p> <p>(j) the construction of access and service roads</p> <p>and the terms "Commencement" "Commenced" and "Commences" shall be construed accordingly</p>
"Commercial Units"	<p>means any building constructed on the Site as part of the Development which is not a Dwelling or ancillary thereto</p> <p>and the term "Commercial Unit" shall be construed accordingly</p>
"the Councils"	means the Borough Council and the County Council
"County Council Contribution"	The sum of four hundred and eighty-three thousand five hundred pounds only (£483,500) BCIS Indexed
"County Council Monitoring Fee"	Means the sum of one thousand two hundred and thirty-six pounds (£1,236.00)
"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
"Financial Contributions"	means any or all of the following financial contributions defined in the Deed:

	<p>County Council Contribution</p> <p>Recreational Avoidance and Mitigation Strategy ("RAMS") Contribution</p> <p>Landscape Maintenance Contribution</p> <p>TRO Contribution</p>
"Landscape Maintenance Contribution"	The sum of five thousand pounds only (£5,000) BCIS Indexed
"Late Payment Interest"	means interest calculated at the rate of 4% above the base lending rate from time to time of Bank of England
"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
"Permission"	means the planning permission granted pursuant to the Application in the form annexed to this Deed or any variation to that permission granted pursuant to Section 73 of the 1990 Act
"Plan"	means the plan annexed at the First Schedule hereto and marked "Plan"
"Property"	means the land at Grafton Way, Ipswich in the County of Suffolk shown edged red on the Plan
"Recreational Avoidance and Mitigation Strategy ("RAMS") Contribution"	The sum of twenty-nine thousand and eighty six pounds and ninety seven pence (£29,086.97) BCIS Indexed
"TRO Contribution"	the sum of eleven thousand five hundred pounds (£11,500) 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 1972

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 Property or part thereof PROVIDED that no person shall be liable for any breach of an Obligation contained in this Deed in respect of any part of the Property in which they do not hold an interest or any breach 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. The Owner shall also pay the County Council Monitoring Fee on completion of this Agreement.

- 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) 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 subject to the below 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 In the event that any new planning permission is granted in respect of the Development pursuant to section 73 of the 1990 Act BUT ONLY in such circumstances as follows and not otherwise: to amend detail with respect of number of dwellings; and/or the contributions; and/or triggers relating thereto, then subject to an agreement between the parties to this Deed (or their successors) with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:
- 32.1 the obligations in this Deed shall (in addition to continuing to bind the Property in respect of the Planning Permission) relate to and bind the Property in respect of any planning permission granted pursuant to section 73 of the 1990 Act; and
- 32.2 the definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under section 73 of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s),
- PROVIDED THAT nothing in this clause shall fetter the discretion of the Borough Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to section 106 of the 1990 Act or a modification agreement pursuant to 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 or Commercial Units) 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 (1st) Dwelling;
 - (c) Occupation of 25% of Market Units;
 - (d) Occupation of 50% of Market Units;
 - (e) Occupation of the eighty-fifth (85th) Dwelling;
 - (f) Completion of the Development
- 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 their mortgagee or any person deriving title from any such person.
- 47 The obligations in this Deed shall not be enforceable against any individual owner, lessee or occupier of a Commercial Units or their mortgagee or any person deriving title from any such person.
- 48 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.
- 49 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Property shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Property shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Property in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

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

FIRST SCHEDULE

The Plan

SECONO SCHEDULE

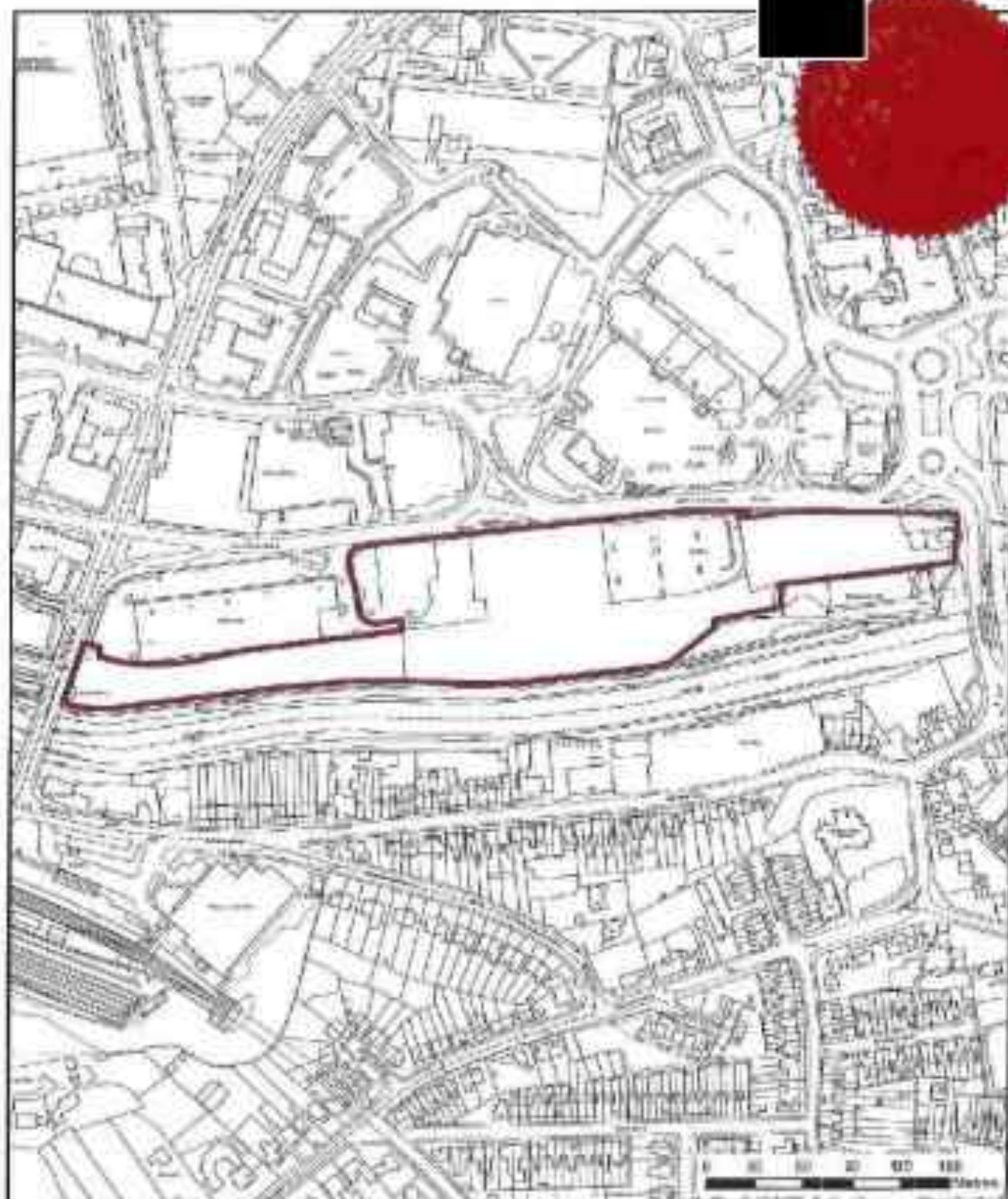
The Planning Obligations

PART 1 THE OWNER'S COVENANTS WITH THE BOROUGH COUNCIL

1. AFFORDABLE HOUSING

1.1 Defined terms

"Affordable Housing"	shall have the meaning afforded to it in Annex 2 of the National Planning Policy Framework dated July 2021 (as may be amended from time to time or such other national policy that may from time to time replace and/or update this framework);
"Affordable Housing Contract"	means a binding contract between the Owner and the Affordable Housing Provider for the transfer and construction of the Affordable Housing Units within the whole or a part of the Development to the Affordable Housing Provider.
"Affordable Housing Mix"	means the type, tenure and number of Affordable Housing Units as set out in paragraph 8 of this Part of this Schedule or otherwise agreed in writing at any time with the Borough Council
"Affordable Housing Location Plan"	means a document that identifies the location and delivery timeframe for the Affordable Housing Units;
"Affordable Housing Provider"	means an Approved Affordable Housing Provider or another registered provider of social housing as defined in section 80(2)(a) of Part 2 of the Housing and Regeneration Act 2008 or such other person, individual, corporation or other body approved in accordance with paragraph 1.3 of Part 1 of Schedule 2
"Affordable Housing Units"	means the 10 Dwellings to be provided as Affordable Housing in Perpetuity;
"Approved Affordable Housing Provider"	means Clarion Housing Group, Flagship Housing Group, Orbit East, Orwell Housing Association, Suffolk Housing (Iceni Homes) the AAHP PROVIDED THAT nothing in this Deed shall fetter the Borough Council's discretion to declare any one of the Approved Affordable Housing Providers no longer approver for the purposes of the Development and the Borough Council shall promptly notify the Owners in writing in such instances PROVIDED FURTHER THAT where the Borough Council have notified the Owner that any Approved Affordable Housing Provider



IPSWICH BOROUGH COUNCIL
PLANNING AND DEVELOPMENT
Walter Fulcher, BS&Hovers PCOp, MRTPI, Head of Development

IP/19/00148/FUL
Redevelopment site, Grafton Way



Map/Doc: **A 12,477**

Scale: **1:3,250**

Date: **Dec 2020**

is no longer approved this shall not have any effect on any Affordable Housing Contracts already entered into at the time of receipt of such notification and the Owners shall be entitled to continue to deal with such Affordable Housing Providers pursuant to any existing Affordable Housing Contracts AND the Owner shall be entitled to seek the Borough Council's approval to alternative and/or additional Affordable Housing Providers;

"Eligible Households"

means a person or persons in need of accommodation who are unable to rent or buy on the local open market determined in accordance with the Borough Council's housing allocation policy or as otherwise approved by the Borough Council or by mutual exchange in accordance with section 158 of the 2011 Act;

"Intermediate Affordable Housing Unit"

means the Affordable Housing Units to be made available to Eligible Households either to buy at a discount of at least 20% of the local open market value or to rent or to rent to buy including but not limited to Intermediate Market Rent, Shared Ownership and Shared Equity or such other intermediate tenures as may be included in the definition of Affordable Housing from time to time and the term Intermediate Affordable Housing is to be construed accordingly;

"Intermediate Market Rent"

means a rent that is set at least 20% (twenty per cent) below Open Market Rent;

"Market Units"

means any Dwelling which is not an Affordable Housing Unit constructed within the Development and the term "Market Unit" shall be construed accordingly;

"Open Market Rent"

means the rent calculated in accordance with the definition of "Market Rent" at Practice Statement 3.4 of the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards (6th Edition) or such amended definition as may replace it from time to time;

"Open Market Value"

means the best price at which the sale of an interest in a Dwelling (other than an Affordable Housing Unit) would have been completed unconditionally for cash consideration on the date of valuation assuming (1) a willing buyer and a willing seller (ii) any restrictions imposed on a Dwelling by this Deed are disregarded (iii) there has been a reasonable period to completion within which to negotiate the sale (iv) the Dwelling has been freely exposed to the market (v) both the buyer and the seller acted knowledgeably, prudently and without compulsion as determined by a Royal Institute of Chartered Surveyors qualified independent valuer

"Perpetuity"	means a minimum term of One Hundred and Twenty Five years from the date of first Occupation of an Affordable Housing Unit;
"Shared Equity"	means an Intermediate Affordable Housing product that has a minimum 20% discount to Open Market Value;
"Shared Ownership Unit"	means any Affordable Housing Unit occupied partly for rent and partly by way of owner occupation on shared ownership arrangements as defined in section 70(4) of the Housing and Regeneration Act 2008 where the lessee for the time being has the right to acquire 100% of the equity from the Affordable Housing Provider over time;
"Staircasing"	means the purchase by the owners of additional equity in a Shared Ownership Unit or Shared Equity unit;
"Standards"	means the Housing Corporation Design and Quality Standard (or any successor standards) that apply at the time of commencement of construction of the Affordable Housing Units in question together with Joseph Rowntree Lifetime Standards together with at least Code for Sustainable Homes Level 3.

- 1.2 Prior to the Commencement of Development the Owner shall submit the Affordable Housing Location Plan Identifying the location and delivery timeframe of the Ten (10) Affordable Housing Units;
- 1.3 In the event the Owner proposes to dispose of any Affordable Housing Unit(s) to an Affordable Housing Provider that is not an Approved Affordable Housing Provider, the Owner shall prior to Commencement of Development obtain the Borough Council's written approval for the proposed Affordable Housing Provider(s) (such approval not to be unreasonably withheld or delayed).
- 1.4 The Owner shall:
 - 1.4.1 Proceed diligently and with all due expedition to negotiate and enter into an Affordable Housing Contract in respect of the Affordable Housing Units to be provided pursuant to this Schedule;
 - 1.4.2 Notify the Borough Council within ten (10) Working Days of entering into an Affordable Housing Contract.

- 1.5 Not to Occupy more than 50% of the Market Units unless and until all of the Intermediate Affordable Housing Units have been completed and made available for occupation.
- 1.6 Not to provide the Affordable Housing Units otherwise than in accordance with the following Affordable Housing Mix (unless otherwise agreed in writing between the Owner and the Borough Council)

Unit Type	Proportion of Total Affordable Housing Units
2 bed house	60%
3 bed house	40%

Subject to a tolerance of +/- 2.5% on one bed flats and two bed houses and +/- 0.5% on two bed flats and three bed houses.

- 1.7 Save as provided for in paragraph 1.8 of this Part of this Schedule below, the Owner covenants with the Borough Council in respect of the Affordable Housing not to Occupy or cause or permit to become Occupied the Affordable Housing Units for any purpose other than for Affordable Housing in Perpetuity.
- 1.8 The provisions of this Schedule shall not be binding on:
- 1.8.1 any mortgagee or chargee or any successor in title thereto and their respective mortgagees or chargees; or
- 1.8.2 a mortgagee or charge (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person, appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 1.8.2.1 such mortgagee or chargee or Receiver shall first give written notice to the Borough Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of not less than three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Affordable Housing Provider or to the Borough Council for a consideration not less than the amount due and

outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

1.8.2.2 if such disposal has not completed within the three month period, the mortgagee chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely.

1.8.3 any Shared Ownership Unit where 100% (one hundred per cent) of the equity in that Shared Ownership Unit has been purchased by the tenant via Staircasing;

1.8.4 any Intermediate Affordable Housing Units where the occupier is also the owner of the entire equity in the property; or

1.8.5 any person or body deriving title through or from any of the parties mentioned in this paragraph 1.8.

1.9 Upon the transfer of any Affordable Housing Units to an Affordable Housing Provider the obligations imposed on the Owner in this Schedule in relation to those Affordable Housing Units shall be observed and performed by the Affordable Housing Provider and where any obligation is expressed as an obligation on the Owner to procure any act on the part of the Affordable Housing Provider, such obligation shall be construed as an obligation of the Affordable Housing Provider to itself perform the obligation in question.

1.10 Subject to the terms of this Schedule no Intermediate Affordable Housing Unit provided under the terms of this Schedule shall be Occupied other than as an Intermediate Affordable Housing Unit save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenant of any part of the Intermediate Affordable Housing Unit;

2. FINANCIAL CONTRIBUTIONS

The Owner covenants as follows:

2.1 LANDSCAPE MAINTENANCE CONTRIBUTION

2.1.1 to pay to the Borough Council the Landscape Maintenance Contribution prior to the first (1st) Occupation of the first (1st) Dwelling.

- 2.1.2 not to Occupy or permit Occupation of any Dwellings until the Landscape Maintenance Contribution has been paid to the Borough Council.

2.2 RAMS CONTRIBUTION

- 2.2.1 to pay to the Borough Council the RAMS Contribution prior to the first (1st) Occupation of the first (1st) Dwelling.
- 2.2.2 not to Occupy or permit Occupation of any Dwellings until the RAMS Contribution has been paid to the Borough Council

PART2 THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

The Owner covenants as follows

1 TRO CONTRIBUTION

- 1.1 to pay to the County Council the TRO Contribution prior to the Commencement of Development.
- 1.2 not to Occupy or permit Commencement of Development until the TRO Contribution has been paid to the County Council.

2. COUNTY COUNCIL CONTRIBUTION

- 2.1 to pay to the County Council 50% of the County Council Contribution prior to the first (1st) Occupation of the first (1st) Dwelling.
- 2.2 not to Occupy or permit Occupation of any Dwellings until 50% of the County Council Contribution has been paid to the County Council.
- 2.3 to pay to the County Council 50% of the County Council Contribution prior to the first (1st) Occupation of the eighty-sixth (86th) Dwelling.
- 2.4 not to Occupy or permit Occupation of more than eighty-six (86) Dwellings until the whole of the County Council Contribution has been paid to the County Council.

PART 3 VIABILITY

1.1 Definitions

In this Second Schedule **Part 3 Viability** the following words and expressions have the following meanings:

"Additional Contribution"	means a sum equal to 50% of any Profit up to but not exceeding the Additional Contribution Cap
"Additional Contribution Cap"	means the aggregate of the Borough Affordable Housing Contribution Cap and the County Contribution Cap being the sum of three million three hundred and eight thousand eight hundred pounds (£3,308,800)
"Benchmark Land Value"	means the price for which the Property would reasonably be sold by a willing seller to a willing buyer to support the development being the sum of [three million and twenty-four thousand pounds (£3,024,000) plus 20% landowner incentive in accordance with the Original Viability Assessment
"Borough Affordable Housing Contribution Cap"	means the sum of one million six hundred and eighty-five pounds (£1,685,000)
"Borough Portion"	<p>means the amount of any Additional Contribution to be paid to the Borough Council which shall be calculated using the following formula:</p> $BP = AC / ACC \times BCC$ <p>Where:</p> <p>BP = the Borough Portion</p> <p>AC = the Additional Contribution</p> <p>ACC = the Additional Contribution Cap</p>

	BCC = the Borough Contribution Cap
"Completion Date"	means the date on which the ^{Final} Dwelling and final Commercial Unit (whichever is the later) within the Development is Occupied
"County Contribution Cap"	means the sum of one million six hundred and twenty-three thousand and eight hundred pounds (£1,623,800)
"County Portion"	<p>means the amount of any Additional Contribution to be paid to the County Council which shall be calculated using the following formula:</p> $CP = (AC / ACC) \times CCC$ <p>Where:</p> <p>CP = the County Portion</p> <p>AC = the Additional Contribution</p> <p>ACC = the Additional Contribution Cap</p> <p>CCC = the County Contribution Cap</p>
"Development Cost"	means the actual cost of carrying out the development including construction costs, preliminaries, professional fees, contingencies, marketing and letting, disposal fees, borrowing and funding rates, finance costs and other cost items for which estimates are included in the Original Viability Assessment
"Developer's Profit"	means 20% on the Gross Development Value
"External Consultant"	means the external consultant appointed by the Borough Council to independently assess the Updated Viability Assessment

"Gross Development Costs"	<p>means the aggregate of:</p> <ul style="list-style-type: none"> (a) the Benchmark Land Value; (b) cost of complying with any covenants or other contractual obligations affecting the title (c) the Development Cost; (d) the Planning Cost; and (e) the Developer's Profit.
"Gross Development Value"	<p>means the sum of the value of all gross receipts (in cash or in kind) from the sale of all the Dwellings and Commercial Units comprised in the Development</p>
"Original Viability Assessment"	<p>means the original viability assessment produced by Iceni Projects Limited dated February 2019 and submitted by the Owner to the Borough Council as part of the Application.</p>
"Planning Cost"	<p>means the aggregate cost of complying with the Permission, subsequent planning application and planning obligations contained in this Agreement excluding the Additional Affordable Housing Contribution which is contingent upon the outcome of the Updated Viability Appraisal</p>
"Profit"	<p>the amount (if any) by which the Gross Development Value exceeds the Gross Development Costs</p>
"Updated Viability Assessment"	<p>means an update to the Original Viability Assessment and to be in the same format as the Original Viability Assessment the point of which is to assess the financial viability of the</p>

	Development to ascertain whether the Development results in a Profit
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1.2 The Owner covenants as follows:

- 1.2.1 Within 10 Working Days of the Completion Date to notify the Borough Council in writing of completion of all the Dwellings and Commercial Units together with evidence demonstrating the same.
- 1.2.2 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.
- 1.2.3 Following consultation with the County Council 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.
- 1.2.4 Within 56 Working Days of receiving the Updated Viability Assessment or any additional information requested by the Borough Council or the External Consultant (whichever is received later), then 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 Development results in a Profit.
- 1.2.5 If the outcome of the Updated Viability Assessment is that the Development results in a Profit then no later than six (6) months from the date that the Borough Council informs the Owner pursuant to clause 2.2.4 that the Development results in a Profit the Owner shall pay the Borough Portion to the Borough Council and the County Portion to the County Council