

Dated 5 AUGUST 2024

Planning Obligation by way of Unilateral Undertaking
pursuant to Section 106 of the
Town and Country Planning Act 1990 (as amended)
relating to land at Adventure Golf Sea Road Felixstowe IP11 2BB

Given by:

- (1) JAMES THREADWELL; DEBORAH WOODMANSEE; DARREN
THREADWELL AND ROWANMOOR TRUSTEES LIMITED

Given to:

- (2) SUFFOLK COUNTY COUNCIL

APPEAL REF:- APP/X3540/W/24/3344326

COUNCIL REF:- DC/22/3980/FUL

We hereby certify this to be a true copy of the original

Date 5 AUGUST 2024

Holmes & Hills LLP
A12 Commercial Hub, 86 London Rd, Marks Tey, Essex, CO6 1ED

THIS DEED is made the
BY:

5

day of August,

2024

- (1) **JAMES THREADWELL** and **DEBORAH WOODMANSEE** and **DARREN THREADWELL** all of Regal House Sea Road Felixstowe Suffolk IP11 2DQ and **ROWANMOOR TRUSTEES LTD** (Co. Regn. No. 1846413) of Rowanmoor House, 46-50 Castle Street, Salisbury SP1 3TS all acting as trustees for Family Amusements Ltd **SSAS** ("the Owner")

and creates planning obligations which are enforceable by:

- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council")

WHEREAS:

- A. For the purposes of the Act, the County Council is a local planning authority for the area within which the Site is located and the local education authority for the area within which the Site is located and the authority by whom the obligations in this Deed are enforceable.
- B. The Owner is the owner of the freehold interest in the part of the Site that is registered at HM Land Registry under title number SK230485 which is free from incumbrances that would otherwise prevent the Owner from entering into this Deed.
- C. The Application was submitted on behalf of the Owner to the Council and the Council determined to refuse the Application.
- D. The Appeal has been lodged on behalf of the Owner with the Secretary of State against the Council's refusal to grant planning permission for the Development.
- E. The Appeal will be considered by an Inspector appointed by the Secretary of State and in the event that the Inspector or the Secretary of State decides to uphold the Appeal and grant Planning Permission the Owner agrees that Planning Permission should be granted subject to the planning obligations set out in this Deed.

- F. This Deed is entered into for the purposes of providing planning obligations binding the estate and interest of the Owner in the Site under Section 106 of the Act in the event that Planning Permission is issued.

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

- 1.1. In this Deed where the context so admits the following words and expressions shall have the following meanings:

“Act” means the Town and Country Planning Act 1990, as amended by: (a) the Planning and Compensation Act 1991 and (b) the Planning and Compulsory Purchase Act 2004

“Appeal” means the appeal lodged with the Secretary of State pursuant to Section 78 of the Act under reference number APP/X3540/W/24/3344326 against the refusal of the Council to grant Planning Permission for the Development

“the Application” means the application for full planning permission for the Development and given reference DC/22/3980/FUL by the Council

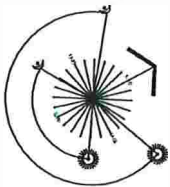
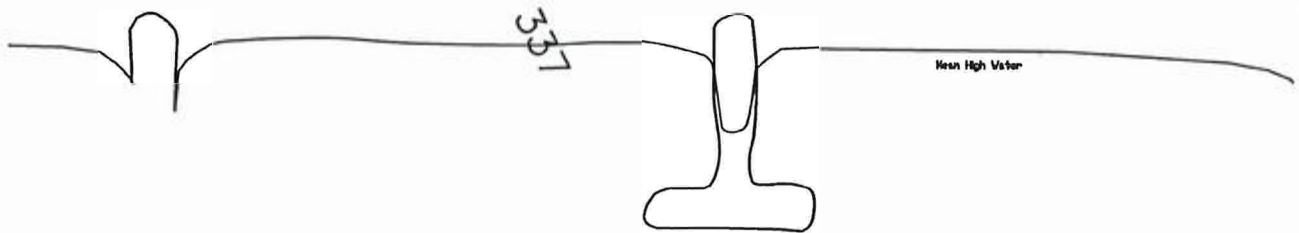
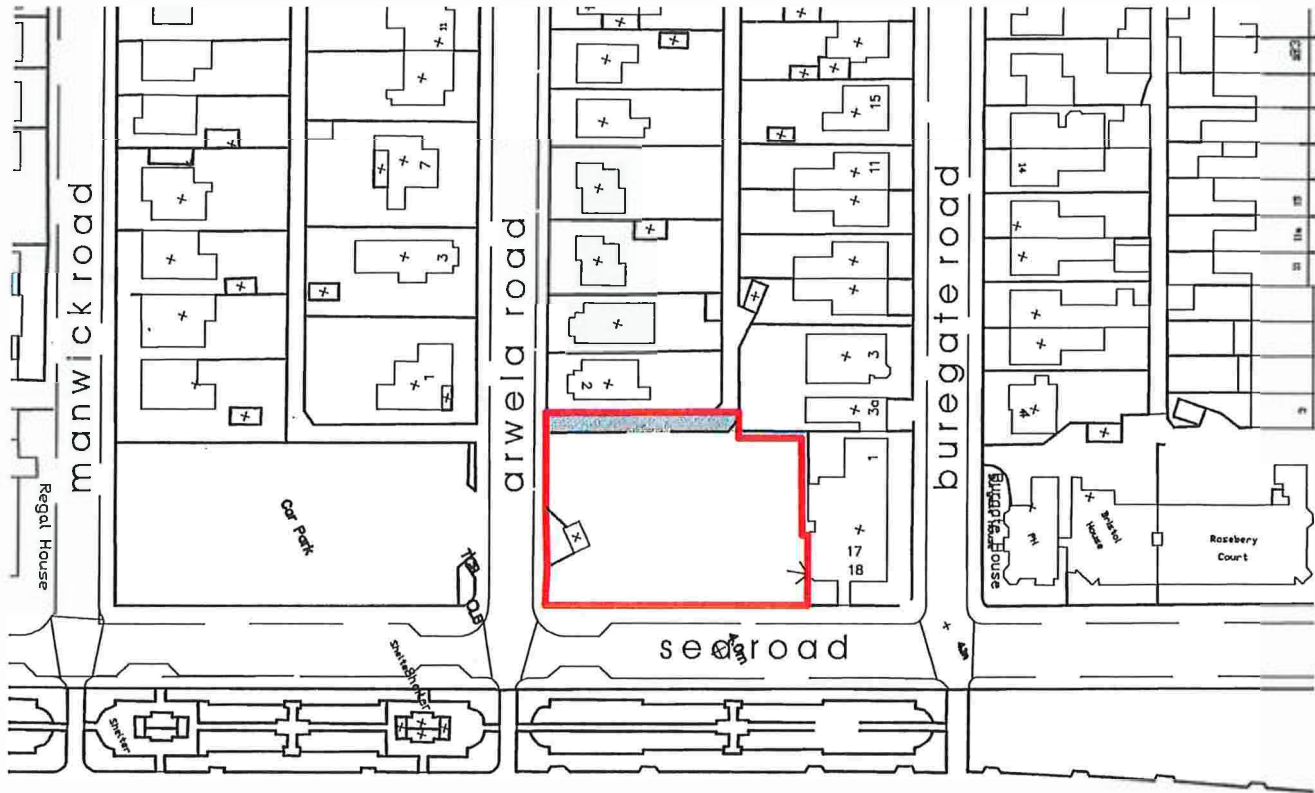
“BCIS Index” means the Building Cost Information Service Index published from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties;

“BCIS Index Linked” means the increase in any sum referred to in the Schedule to this Deed by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 7 of this Deed;

“Commencement of the Development” means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the Act and “Commence the Development” shall be construed accordingly PROVIDED THAT (for the



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**ROBERT
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PROJECT: Proposed Redevelopment for Ground Floor
Commercial & Upper Floors Residential
Former Adventure Golf, Sea Road
Felixstowe

DRAWING: Location Plan

SCALE: 1:1250 @ A4 DATE: October 2022

DRAWING NO: 2725.20.00 REVISION:

THIS DRAWING IS COPYRIGHT. © DO NOT SCALE
Check all dimensions on site prior to commencement - refer any discrepancies to architects

purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not be a material operation and **"Commence"** and **"Commence Development"** shall be construed accordingly

"the Council"

means East Suffolk Council

"Development"

means commercial and leisure spaces at ground floor and 14 flats on upper floors on the Site

"Dwelling(s)"

means a residential flats/apartments constructed as part of the Development

"Inspector"

means a planning inspector appointed by the Secretary of State to hear/determine the Appeal

"Notice of Commencement"

means notice in writing to advise the County Council of the expected date of Commencement of Development

"Occupation"

means occupation of a Dwelling constructed as part of the Development for the purposes permitted by the Planning Permission and shall not include day time occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for the storage of plant and materials and **"Occupy"** and **"Occupied"** shall mutatis mutandis be construed accordingly

"Plan"

means the plan attached to this Deed

“Planning Permission” means planning permission for the Development granted by the Inspector pursuant to the Appeal

“Secretary of State” the Secretary of State for Housing and Communities and Local Government or such other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State by the Act

“Site” means land at south west side of 17-18 Sea Road Felixstowe IP11 2DF shown for identification purposes edged red on the Plan

"Working Days" means any day apart from a Saturday, Sunday, Bank or Public holiday in England

1.2 Where the context so requires:

1.2.1 A reference in this Deed to an Act of Parliament or any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same

1.2.2 Words importing any gender include any other gender. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa

1.2.3 Any headings or side notes are for ease of reference only and shall not affect the construction of this Deed

1.2.4 Where a party includes more than one person any obligations of that party shall be joint and several

2. INTERPRETATION AND LEGAL EFFECT

2.1 This Deed is made pursuant to Section 106 of the Act and the covenants contained herein are planning obligations for the purposes of Section 106 of the Act in respect of which:

2.1.1 The Owner owns the freehold title to the Site.

2.1.2 The County Council is the local planning authority entitled to enforce the provisions of this Deed and the covenants contained in this Deed shall be so enforceable.

2.1.3 The County Council is the education authority for the area in which the Site is located

2.1.4 This Deed is entered into in respect of the Site with the intent that it shall bind the freehold interest in the Site.

2.1.5 This Deed shall be binding on all successors and assigns in title of the Owner and any persons claiming under or through them.

2.1.6 This Deed has been executed as a Deed and the Owner shall supply a copy of it to the Council so that it may be registered by the Council against the Site as a Local Land Charge and entered into the planning register maintained by the Council under the Act.

2.2 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.

2.3 Save in respect of the obligations in this Deed expressly requiring compliance prior to Commencement of Development and which shall become operative on the issue of the Planning Permission this Deed shall thereafter come into effect on the Commencement of Development PROVIDED ALWAYS THAT the obligations contained in this Deed are conditional upon confirmation by the Inspector or the Secretary of State in the decision notice or letter issued pursuant to the Appeal that the planning obligations contained in this Deed comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) SAVE THAT if the Inspector or the Secretary of State in the decision notice or letter issued pursuant to the Appeal states that a planning obligation contained in this Deed does not comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) that shall not affect the enforceability of the remaining planning obligations in this Deed

- 2.4 The provisions of this Deed shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999

3. MISCELLANEOUS

- 3.1 Nothing in this Deed shall prohibit the rights to develop any part of the Site in accordance with a grant of further planning permission issued after the completion of this Deed.
- 3.2 No person shall be liable for any breach of this Deed unless they hold an interest in that part of the Site in respect of which such breach occurs or held such an interest at the date of the breach neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause.
- 3.3 The Owner shall save for liability in respect of any antecedent breach upon parting with their respective interests in the Site or part thereof be released from all obligations rights and duties under the terms of this Deed and all outstanding obligations rights and duties shall pass to the Owner's successors in title to the Site.
- 3.4 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.
- 3.5 The obligations in this Deed will not be enforceable against a purchaser an occupier or tenant or mortgagee of the completed Dwelling or against any successor in title or against anyone deriving title from any of them.
- 3.6 A mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee in possession of the Site and it will not be liable for any breach of the provisions of this Deed after it has parted with or released its interest in the Site.
- 3.7 The obligations in this Deed will not be enforceable against the individual owners or occupiers or mortgagees of the Dwelling constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or

mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.

3.8 The provisions of this Deed will come to an end if the Planning Permission is quashed revoked or otherwise withdrawn or modified without the consent of the Owner before the Commencement of Development or the Planning Permission expires.

3.9 Where the provisions of this Deed come to an end under Clause 3.8 the Owner may request that the Council vacate or cancel the entry made in the Local Land Charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affects the Site.

4. NOTICES

4.1 All notices given or served or required to be given or served under this Deed shall be given or served as follows:

4.1.1 by personal delivery by hand (in which case service is immediately effected)

4.1.2 by first class post (in which case service is effected on the second day after posting)

4.2 The address for service of notices:

4.2.1 for the County Council shall be at the County Councils address at the head of this Deed and marked for the attention of Executive Director of Growth, Highways and Infrastructure; and (b) quote the planning application reference DC/22/3980/FUL

4.2.2 to the Owner as set out above

5. THE OWNER'S COVENANTS

5.1 The Owner HEREBY COVENANTS with the County Council:

5.1.1 To serve on the County Council a Notice of Commencement not less than four weeks before the expected date of Commencement of the Development.

5.1.2 To give the County Council written notice 14 days prior to the expected date of first Occupation of the first Dwelling.

5.1.3 To give the County Council written notice of any transfer in ownership of its freehold interest in the Site (save for disposals to any statutory undertaker or

to any individual purchaser of a Dwelling) occurring before all the planning obligations under this Deed have been discharged such notice to be served within twenty (20) Working Days' of such transfer quoting the Application reference number DC/22/3980/FUL and to 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 land purchased by reference to a plan and a copy of the registered title and plan thereto.

- 5.1.4 Subject to a specific finding by the Inspector or and Secretary of State in the Appeal decision notice or letter that the planning obligations contained in this Deed are compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) to observe the planning obligations contained in the Schedule to this Deed.

6. COSTS

- 6.1 Upon completion of this Deed the Developer covenants to pay to the County Council its reasonable and proper legal costs in a sum not to exceed £1500.00 (no VAT) in connection with the negotiation and completion of this Deed
- 6.2 Upon the grant of Planning Permission the Owner covenants to pay to the County Council the County Council's reasonable and proper administration costs in the sum of £476.00 (no vat) for monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed and the Owner further covenants with the County Council not to Commence Development unless and until the said £476.00 (no vat) has been paid to the County Council

7. INDEXATION

- 7.1 The Primary New Build Contribution as defined in the Schedule shall be increased by an amount equivalent to the increase in the BCIS Index and (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:
- 7.1.1 A is the sum payable under this Deed;
- 7.1.2 B is the original sum calculated as the sum payable;
- 7.1.3 C is the BCIS Index for the month 2 months before the date on which the sum is payable;

7.1.4 D is the BCIS Index for the month 2 months before the date of this Deed; and

7.1.5 C/D is greater than 1

8. LIABILITY

8.1 The liability of Rowanmoor Trustees Limited and all member trustees of Rowanmoor Trustees Limited is in all circumstances limited to the assets of the Family Amusements Ltd SSAS

9. JURISDICTION

9.1 This Deed is to be governed by and interpreted in accordance with the law of England and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed

IN WITNESS WHEREOF this Deed has been executed as a Deed the day and year first before written

SCHEDULE

PRIMARY NEW BUILD CONTRIBUTION

1. In this Schedule the following words and expressions shall have the following meaning:

“Primary New Build Contribution” means the sum of Twenty Five Thousand Nine Hundred and Eighty Nine Pounds (£25,989.00), BCIS Indexed Linked to be applied by the County Council solely towards the Primary New Build Contribution Purposes

“Primary New Build Contribution Purposes” means the use of the Primary New Build Contribution towards the building of a new primary school facility to serve the Development and including the reimbursement of capital funding made by the County Council in anticipation of payment of the Primary New Build Contribution

2. The Owner hereby covenants with the County Council to pay to the County Council the Primary New Build Contribution prior to the first Occupation of any Dwelling and not to Occupy any Dwelling unless and until the said Primary New Build Contribution has been paid to the County Council Provided That the Primary New Build Contribution is paid to the County Council strictly on the basis that:-

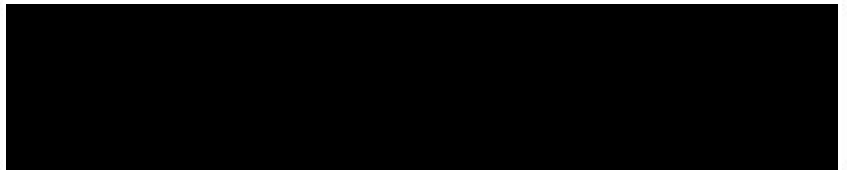
2.1 the County Council shall utilise the Primary New Build Contribution solely on the Primary new Build Contribution Purposes; and

2.2 the Owner shall be entitled to request in writing that the County Council returns to the Owner any unused or unspent part of the Primary New Build Contribution (including interest applied at the Bank of England base rate minus two basis points compounding annually at financial year end) on the tenth (10th) anniversary of the date that the final Dwelling was first Occupied

EXECUTED as a **DEED** by
JAMES THREADWELL

in the presence of:

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)

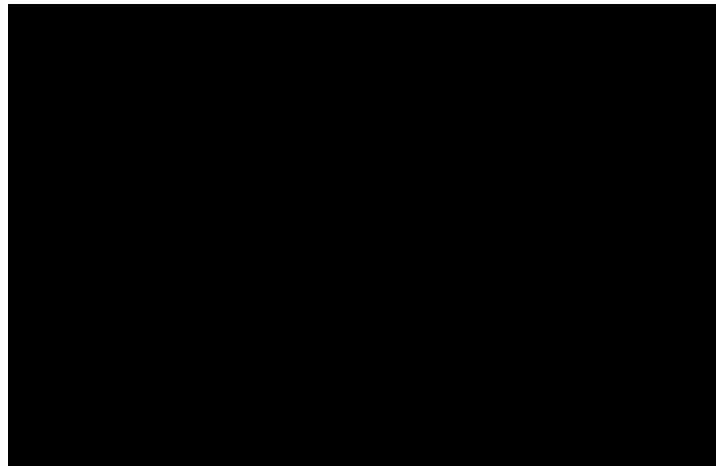


Signature of witness:

Name of witness:

Address of witness:

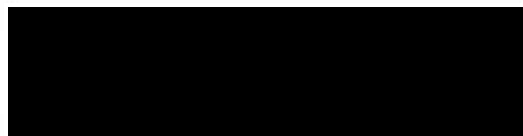
Occupation of witness:



EXECUTED as a **DEED** by
DEBORAH WOODMANSEE

in the presence of:

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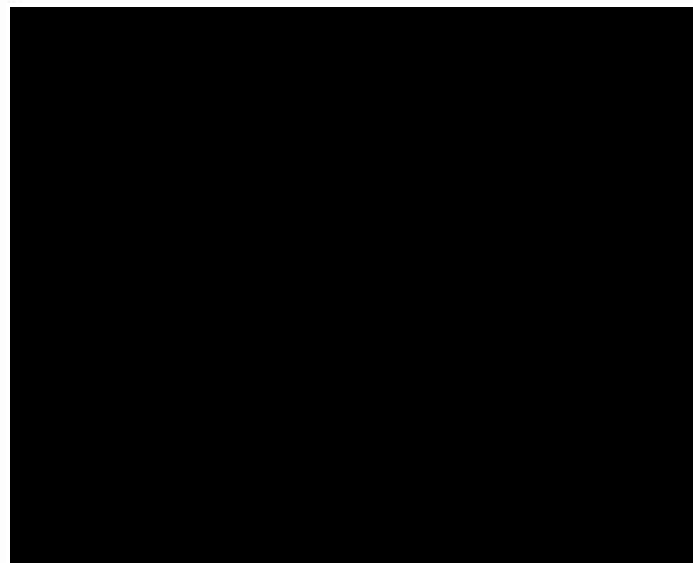


Signature of witness:

Name of witness:

Address of witness:

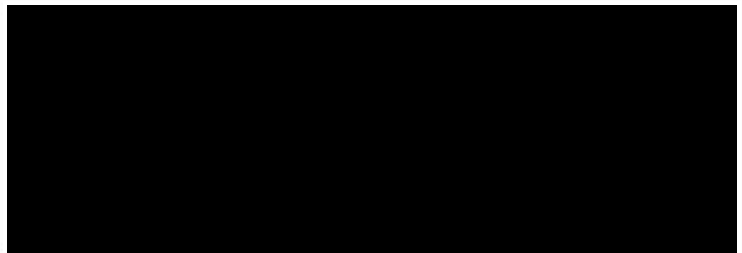
Occupation of witness:



EXECUTED as a **DEED** by)

DARREN THREADWELL)

in the presence of:)

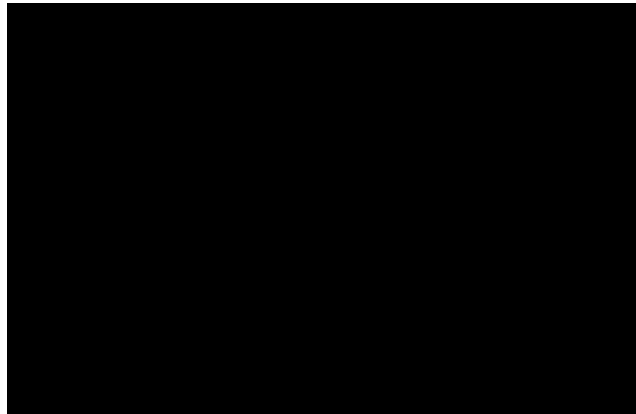


Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:



EXECUTED as a **DEED** by)

affixing the **COMMON SEAL** of)

ROWANMOOR TRUSTEES LIMITED)

in the presence of:)



Authorised signatory



Authorised signatory