

Dated

1 October

2019

(1) ST HELENA HOSPICE LIMITED

and

(2) TENDRING DISTRICT COUNCIL

**PLANNING OBLIGATION BY DEED OF AGREEMENT
UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990** site at: St Helena's Hospice, 21 Jackson
Road, Clacton on Sea, Essex CO15 1JA

relating to full planning application (19/00007/FUL) for the
demolition of existing building and redevelopment of site to
provide 40 no. flats with associated parking and ground floor
pub/restaurant/retail use together with Affordable Housing,
Public Open Space and RAMS Contributions

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THIS DEED is made this

1 day of October

2019

BETWEEN

PARTIES

- (1) **ST HELENA HOSPICE LIMITED** (Co Regn No. 01511841) whose registered office is situate at St Helena Hospice, Myland Hall, Bamcroft Close, Colchester, Essex CO4 9JU ("the Owner")
- (2) **TENDRING DISTRICT COUNCIL** of Council Offices, Thorpe Road, Weeley, Essex CO16 9AJ ("the Council")

WHEREAS

- (A) The Council is local planning authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Application Site is situated and the Council may enforce the terms of this Agreement
- (B) The Owner is the owner of the Application Site which forms the land registered at the Land Registry with Freehold Title Absolute under Title Number EX760280
- (C) The Council considers it expedient should planning permission be granted pursuant to such planning application that provision should be made for regulating or facilitating the development or use of the Application Site in the manner hereinafter appearing and the Council considers that entering into this Agreement will be of benefit to the public
- (E) The Owner has agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and their successors in title
- (F) In order to satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010, the Owner agrees with the Council that the obligations imposed in this Agreement are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and are reasonably related in scale and kind to the Development

NOW THIS AGREEMENT WITNESSES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Agreement (including the Recitals) the following expressions shall have the following meanings

- 1.1.1 **"Act"** means the Town and Country Planning Act 1990 (as amended)
- 1.1.2 **"Application"** means the application for planning permission submitted to the Council for the Development and allocated reference number 19/00007/FUL

- 1.1.3 **"Application Site"** means the land at St Helena Hospice, Jackson Road, Clacton on Sea, Essex CO15 1JA as shown edged red on the Plan annexed hereto marked "Plan" being part of the land registered at the Land Registry under title numbers EX760280
- 1.1.4 **"Commencement Date"** means the date on which the Development commences by the carrying out on the Application Site pursuant to the Planning Permission of Commencement of Development
- 1.1.5 **"Commencement of Development"** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins other than (for the purposes of this Agreement and for no other purpose) operations consisting of site survey asbestos survey drainage survey flood risk assessment arborology (tree) survey site clearance archaeological investigations for the purpose of assessing ground conditions preparation work remedial or remediation work in respect of any contamination or other adverse ground conditions diversion and laying or removal of services erection of any temporary means of enclosure including fences and hoardings the temporary display of site notices or advertisements and **"Commence the Development"** and **"Commencement"** and **"Commence"** shall Mutatis Mutandis be construed accordingly
- 1.1.6 **"Development"** means the demolition of existing building and redevelopment of site to provide 40 no. flats with associated parking and ground floor pub/restaurant/retail use
- 1.1.7 **"Dwelling or Dwellings"** means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission
- 1.1.8 **"Head of Planning"** means Head of Planning of the Council and shall include his duly authorised agents and representatives or any successor of his
- 1.1.9 **"Index"** means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as the Council reasonably requires
- 1.1.10 **"Index-Link(ed)"** means increase(d) to reflect any increase in the Index during the period from and including the date of this Agreement to and including the date of actual payment
- 1.1.11 **"Insolvent"** means in relation to a company or limited liability partnership incorporated in England and Wales, goes into liquidation, has an administrator appointed, has a receiver or administrative receiver appointed over the whole or any part of its assets, enters into any scheme of arrangement with its creditors in satisfaction or composition of its debt under the Insolvency Act 1986 or a winding-up order is made under Part IV of the Insolvency Act 1986 but other than for the purpose of a solvent amalgamation or reconstruction of the company

- 1.1.12 **"Interest"** means interest at 3 (three) percent above the base lending rate of the Bank of England from time to time
- 1.1.13 **"Monitoring Fee"** means the payment of nine hundred pounds (£900.00) for the Council's costs for checking compliance with the provisions of this Agreement in relation to Schedules 1-3
- 1.1.14 **"Notice of Commencement"** means the written notice advising of the proposed Commencement Date and to include in the said notice information as to the number and type of Dwellings to be constructed as part of the Development
- 1.1.15 **"Occupation"** means physical use of the land or buildings for the purposes permitted by the Planning 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 **"Occupied"** and **"Occupy"** shall mutatis mutandis be construed accordingly
- 1.1.16 **"Plan "** means the plan attached to this Agreement labelled **'Plan'**
- 1.1.17 **"Planning Permission"** means the planning permission to be granted by the Council pursuant to the Application
- 1.1.18 **"Schedules"** means Schedules 1 – 3 contained in this Agreement
- 1.1.19 **"Working Days"** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday and **"Working Day"** shall be construed accordingly

1.2 Interpretation

- 1.2.1 Where in this Agreement reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Agreement
- 1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner
- 1.2.4 Wherever there is 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
- 1.2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act 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 Act or deriving validity from it

- 1.2.6 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County the successors to their respective statutory functions
- 1.2.7 The headings and contents list are for reference only and shall not affect construction
- 1.2.8 The words "including" and "include" shall be deemed to be followed by the words "without limitation"

2. LEGAL BASIS

- 2.1 This Agreement is made pursuant to Section 106 of the Act. To the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council against the Owner
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning 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

3. CONDITIONALITY

- 3.1 This Agreement is conditional upon
 - 3.1.1 the grant of the Planning Permission and
 - 3.1.2 the Commencement of Development
- save for provisions 3, 4.1, 4.2, 4.4, 4.5, 4.11, 6.1.1., 11, 12 and 13 whereby such provisions shall instead come into effect immediately upon completion of this Agreement

4. MISCELLANEOUS

- 4.1 The Owner shall pay to the Council on completion of this Agreement the Council's reasonable legal costs and disbursements incurred in the negotiation preparation and execution of this Agreement
- 4.2 The Owner shall pay to the Council the Monitoring Fee on completion of this Agreement.
- 4.3 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

- 4.4 This Agreement shall be registrable as a Local Land Charge by the Council
- 4.5 Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Agreement such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement consent approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning. Any notices shall be deemed to have been properly served if sent by recorded delivery to the Council at its address referred to above and further any notices shall be deemed to have been properly serviced on the Owner at its registered office referred to above marked for the attention of
- 4.6 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement
- 4.7 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement
- 4.8 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 4.9 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Application Site or the part of the Application Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Application Site in any transfer of the Application Site will constitute an interest for the purposes of this clause
- 4.10 This Agreement shall not be enforceable against owner-occupiers or tenants of Dwellings nor against those deriving title (including any mortgagee or charge) from them or any service companies or statutory undertakings who purchase or take a lease or otherwise become proprietor of any land on the Application Site for the purpose of providing services or facilities in connection with the Development
- 4.11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
- 4.12 Any agreement obligation covenant or undertaking contained hereby the Developer, the Council which comprise more than one person or entity shall be joint and several. Where any agreement obligation covenant or undertaking is made with or undertaken towards any of the parties to this Agreement which comprise more than one person it shall be construed as having been made with or undertaken towards each such person separately

- 4.13 No compensation shall be payable by the Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the successors in title to the Council or the Owner and at no cost to the Council
- 4.14 Representatives of the Council may enter upon the Application Site at any reasonable time subject to providing written notice of at least 48 hours to the Owner (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with subject to complying with all health and safety requirements required by the Owner
- 4.15 No variation to this Agreement shall be effective unless made by Agreement and for the avoidance of doubt the consent seal signature execution or approval of a purchaser tenant or residential occupier of any Dwelling shall not be required to vary any part of this Agreement
- 4.16 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement
- 4.17 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their functions in any capacity and the rights powers duties and obligations of the Council under private public or subordinate legislation may be effectively exercised as if neither were a party to this Agreement (and in particular neither shall be precluded from entering into any agreement under the 1980 Act and/or the 1990 Act with any other party and shall not be deemed to be in breach of this Agreement by so doing)

5. OBLIGATIONS OF THE OWNER

- 5.1 The Owner so as to bind the Application Site, covenants with the Council to comply with its obligations set out in the Schedules to this Agreement
- 5.2 The Owner shall provide written Notice of Commencement to the Council no later than 20 Working Days after Commencement

6. COVENANTS BY THE COUNCIL

- 6.1 The Council covenants with the Owner:

6.1.1 to issue the Planning Permission within 5 Working Days after the completion of this Agreement

6.1.2 to provide written confirmation, upon written request of the Owner of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed

6.2 The Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement and to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation

7. WAIVER

No waiver (whether expressed or implied) by the Council (or the Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council (or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

8. CHANGE IN OWNERSHIP

9. Before all the obligations under this Agreement have been discharged, otherwise than in relation to individual purchasers of Dwellings and transfers to the utility companies, the Owner shall give to the Council within one (1) month of the Owner disposing of any part of the Application Site written notice of the name and address of the person to whom the Application Site or any part has been transferred **INTEREST**

If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment

10. VAT

All contributions paid in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable

11. DISPUTE PROVISIONS

11.1 Without prejudice to the rights of any party to this Agreement to take alternative action save for matters of construction (which shall be matters for the Courts) any dispute or disagreement arising under this Agreement including questions of value or any question of reasonableness may be referred at the instance of any party for determination by a single expert whose decision shall be final and binding on the parties

11.2 The following provisions and terms of appointment shall apply to such disputes or disagreements and questions:

- 11.2.1 The expert shall have at least 10 years post qualification experience in the subject matter of the dispute
- 11.2.2 The expert shall be agreed between the parties or appointed by the President of the Royal Institute of Chartered Surveyors at the request of any part to the dispute
- 11.2.3 The persons calling for the determination shall make written submissions to the expert and the other parties within 10 working days of his appointment
- 11.2.4 The other parties shall have 10 working days from the receipt of such written submission or such extended period as the expert shall allow to respond
- 11.2.5 The expert shall disregard any representations made out of time and shall make his decision within 10 working days of receipt of the representations under sub clause 11.2.4 or if none the expiry of the period referred to in sub clause 11.2.3
- 11.2.6 The expert's decision shall be in writing and give reasons for his decision
- 11.2.7 The expert's fees shall be met by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares

12. JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

13. DELIVERY

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated

IN WITNESS whereof the parties hereto have executed this Agreement on the day and year first before written

Schedule 1
Affordable Housing Contribution

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

“the Affordable Housing Contribution”	means the sum of Three hundred and ninety nine thousand pounds (£399,000.00) (Index Linked)
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Payment of the Contribution

The Owner hereby covenants and undertakes with the Council to pay to the Council the Affordable Housing Contribution prior to Occupation of 50% of the Dwellings and not to Occupy more than 50% of the Dwellings until the said Affordable Housing Contribution has been paid to the Council.

Schedule 2

Public Open Space Contribution

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

“the Public Open Space Contribution”	means the sum of Forty two thousand one hundred and thirty four pounds (£42,134.00) (Index Linked)
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Payment of the Contribution

The Owner hereby covenants and undertakes with the Council to pay to the Council the Public Open Space Contribution following completion of the sale of the first Dwelling and prior to Occupation of the second Dwelling and not to Occupy the second Dwelling unless and until the said Public Open Space Contribution has been paid to the Council

Schedule 3

Recreational Disturbance, Avoidance & Mitigation (RAMS) Contribution

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

"European Wildlife Sites"	Means the Colne Special Protection Area, and Ramsar site designated primarily to protect waders & wildfowl
"Recreational Disturbance, Avoidance & Mitigation Contribution"	means the sum of Four thousand eight hundred and ninety two pounds (£4,892.00) (Index Linked) calculated using the Recreational Disturbance, Avoidance & Mitigation Contribution Calculation to be paid by the Owner as a contribution towards the impact of development on the European Wildlife Sites such sum to be Index Linked
"Recreational Disturbance, Avoidance & Mitigation Contribution Calculation"	means the sum of £122.30 x (multiplied) by the total number of new Dwellings proposed pursuant to the Planning Permission to calculate the Recreational Disturbance, Avoidance & Mitigation Contribution

Payment of the Contribution

The Owner hereby covenants and undertakes with the Council to pay to the Council the Recreational Disturbance, Avoidance & Mitigation Contribution before Commencement of the Development and not to Commence the Development unless and until the said Recreational Disturbance, Avoidance & Mitigation Contribution has been paid to the Council

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing THE COMMON SEAL of ST HELENA HOSPICE LTD in the presence of

Director



Please also print name



Director/Secretary



Please also print name

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing THE COMMON SEAL of TENDRING DISTRICT COUNCIL in the presence of

