

THIS AGREEMENT is made the _____ day of _____ 2005

BETWEEN

- (1) **CHELTENHAM BOROUGH COUNCIL** (DX 7406 Cheltenham 1) of P O Box
12 Municipal Offices Promenade Cheltenham Gloucestershire GL50 1PP
("the Council")
- (2) ("the Owner")
- (3) ("the Mortgagee")

WHEREAS

- 1. The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated and by whom the obligations contained in this Agreement are enforceable and is agent for the Highway Authority
- 2. The Owner is the registered proprietor with title absolute under title number of the Application Site and by a Legal Charge dated the Owner charged the Application Site to the Mortgagee
- 3. The Owner has submitted the Application to the Council and the Council having regard to the provisions of the development plan and all other material considerations have resolved to grant planning permission for the Development subject to the Owner entering into this Agreement

NOW THIS DEED WITNESSETH:

1. Definitions and Interpretation

1.1 In this Agreement the following words and expressions shall have the following meanings:

1.1.1 "Act" means the Town and Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force

1.1.2 "Application" means application for planning permission dated and bearing the reference number

..... together with all plans specifications
and particulars deposited with all the Council and forming part
of the Application

1.1.3 "Application Site" means land at
..... Cheltenham
shown edged red on the Plan

1.1.4 "Assistant Director" means the Assistant Director Built
Environment for the time being of the Council or such other
officer authorised by him or the Council to act on his behalf

1.1.5 "Commencement" means the commencement of any material
operation as defined in Section 56 of the Act comprised in the
Development but not including any operations relating to site
investigations or surveys or the demolition of any existing
buildings or clearance of the Application Site and references
in this Agreement to "commence" and "commenced" shall be
construed accordingly

1.1.6 "Development" means implementation upon the Application
Site of the Planning Permission

1.1.7 "Index" means the Road Construction Tender Price Index
(1990 =100) Road Type Factors – New Construction Location
Factors – South West (issued by the Department of
Transport) or by any other Department Ministry or other body
upon which the duties in connection with that index devolves
or during any period when no such exists the index which
replaces the same or is the nearest equivalent thereto as the
Council shall reasonably nominate taking into account any
official reconciliation of changes in its basis of calculation and
indexation shall be construed accordingly

- 1.1.8 "Plan" means the plan annexed hereto
- 1.1.9 "Planning Permission" means the conditional planning permission for development of the Application Site granted in pursuance of the Application
- 1.1.10 "PlaySpace Contribution" means the sum of pounds £..... for the provision of playspace which shall be calculated in accordance with the expectations of Policy RC102 "Playspace and Residential Development" (or any successor or replacement Policy) of the Cheltenham Borough Council Local Plan December 1997 and in accordance with the Cheltenham Borough Council Supplementary Planning Guidance Playspace in Residential Development adopted 22 April 2003 (or any successor or replacement Guidance) (which shall include annual reviews in line with the Retail Prices Index) to facilitate and enable the Development and provide for off site playspace improvements
- 1.1.11 "Retail Prices Index" means the index in the variation of the prices of retail goods published by the Office of National Statistics on or most recently preceding the date when any payment falls due and shall include any future equivalent system which may replace the Retail Prices Index for government statistical purposes and in the event of more than one such index being published the index based on the broadest range of goods and services shall be applicable
- 1.1.12 "Sustainable Transport Contribution" means the sum of pounds £..... calculated in accordance with Policy CP8 of the Cheltenham

Borough Council Local Plan: Second Review Revised Deposit Draft 2004 and the Cheltenham Borough Council emerging Supplementary Planning Guidance "Planning Obligations: Transport" for the provision of a sustainable infrastructure in the vicinity of the Application Site to encourage walking cycling and the use of public transport for journeys to and from the Application Site

1.1.13 "Uncommitted" means not subject to a binding contractual commitment

1.1.14 "Work of Public Art" means a work of visual art or craft produced by an artist or craftsman and sited in a location that is freely accessible to the public

1.2 In this Agreement

1.2.1 words importing the masculine gender include the feminine and the neuter and vice versa

1.2.2 words importing the singular include the plural and vice versa

1.2.3 references to persons include bodies corporate and vice versa

1.2.4 save where the context otherwise requires all obligations given or undertaken by more than one person in the same capacity are given or undertaken by them jointly and severally so as to apply and be enforceable against all both or any of such persons and their and each of their personal representatives

1.2.5 reference to any party shall include any successors in title or responsibilities thereof

- 1.2.6 reference to any officer of the Council shall include such officer for the time being of the Council or anyone authorised by him or the Council to act on his behalf or in that capacity
- 1.2.7 the clause headings shall not affect the construction of this Agreement
- 1.2.8 save where otherwise stated any reference to a numbered clause or schedule means the clause or schedule in this Agreement which is so numbered
- 1.2.9 every reference to any statute or any section of any statute shall be read and construed as including a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme or other such matter made in pursuance of such statute
- 1.2.10 any reference in this Agreement to a working day shall exclude any day between 27th and 31st December inclusive in any year
- 1.2.11 where any expiry date falls on a Saturday Sunday or public holiday then the period concerned shall expire on the next normal working day

2. Statutory Provisions Covenants and Conditions Precedent

- 2.1 This Agreement is made pursuant to the provisions of Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants in the Schedule to this Agreement shall be deemed to be planning obligations for the purposes of Section 106 of the Act and shall bind successors in title to the Application Site

- 2.2 The Owner shall not be liable for any default or breach of the covenants or obligations contained in this Agreement occurring in respect of the whole or part of the Application Site to which the covenant or obligation relates in which it has at the time of the default or breach no legal estate
- 2.3 This Agreement shall be conditional upon the grant of Planning Permission by the Council for the Development
- 2.4 The Covenants contained in the Schedule hereto shall not take effect until the Development has been begun within the terms of clause 2.5 below
- 2.5 For the purposes of this Agreement only and without prejudice to the Planning Permission the Development shall be deemed to have been commenced by the carrying out of any material operation listed in Section 56 of the Act save that a material operation shall not be deemed to include any operations relating to site investigations or surveys
- 1.6 Where consent approval notification or agreement of any party hereto is required for any purpose under or in connection with the terms hereof it shall be made in writing in accordance with clause 5 below
- 1.7 The Mortgagee hereby consents to the giving of the planning obligations on the part of the Owner herein contained and the Mortgagee hereby agrees to be bound by the said obligations only in the event that it becomes mortgagee in possession and that such liability will cease once the Mortgagee has parted with its interest in the Application Site

3. Covenants

- 3.1 Pursuant to Section 106 of the Act the Owner for itself and its successors in title hereby covenants

- 3.1.1 that the restrictions provisions and obligations specified in the Schedule hereto shall be carried out and complied with in accordance with that Schedule
- 3.1.2 that the Application Site shall be permanently subject to the restrictions and provisions specified in the Schedule hereto
- 3.1.3 not to develop or cause or permit to be developed any part of the Application Site otherwise than in strict conformity with the terms of this Agreement
- 3.1.4 to give notice to the Assistant Director of its intention to commence any part of the Development at least 28 days before commencing the Development within the terms of clause 2.5 hereof

3.2 The Council covenants with the Owner to observe and perform the covenants specified in paragraph 9 of the Schedule

4. Disputes

4.1 All differences and disputes which may arise between the parties hereto concerning this Agreement shall:

4.1.1 where the difference or dispute relates to the construction or interpretation of this Agreement be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

4.1.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of

surveyors or civil engineers based in the South West of England or the Midlands and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise

- 4.2 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South West of England or the Midlands to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 4.1.1 or 4.1.2 hereto is applicable
- 4.3 Except as aforesaid any expert appointed pursuant to Clauses 4.1.1 or 4.1.2 or any other person shall:
 - 4.3.1 on his appointment serve written notice thereof on the parties in dispute;
 - 4.3.2 consider any written representations by or on behalf of those parties which are received by him within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;
 - 4.3.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within fifteen working days of receipt by the other party thereof;
 - 4.3.4 have an unfettered discretion to determine the reference to him;

- 4.3.5 serve notice of his determination as soon as he has made it;
- 4.3.6 give full and clear reasons for his decision;
- 4.3.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert

5. Notices

- 5.1 Any notice consent or approval required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or through any document exchange of which the intended recipient is a member or facsimile transmission
- 5.2 The address for service of any such notice consent or approval as aforesaid shall be the address or document exchange number given in the definition of the parties hereto or such other address for service or document exchange number as shall have been previously notified to the other party
- 5.3 A notice consent or approval under this Agreement shall be deemed to have been served as follows:
 - 5.3.1 if personally delivered at the time of delivery;

5.3.2 if posted at the expiration 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

5.3.3 if sent by facsimile transmission at the time of successful transmission;

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be

6. General Provisions

6.1 The Owner warrants to the Council that (save for the Legal Charge in favour of the Mortgagee) it has not leased mortgaged charged or otherwise created any interest in the Application Site at the date of this Agreement

6.2 This Agreement is a local land charge and shall be registered as such

6.3 The Owner covenants that it will pay to the Council no later than the date of completion hereof the Council's reasonable legal costs of and in connection with this Agreement

6.4 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

6.5 Nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Authority and its rights powers duties and obligations under all public or private statutes byelaws and

regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement and in particular this Agreement shall not be deemed to restrict the Council in the exercise of its rights powers duties and obligations as District Planning Authority

6.6 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner

6.7 Where by this Agreement any action approval consent direction authority certificate or agreement is required to be taken given or reached by any party hereto any such action approval consent direction authority certificate or agreement shall not be unreasonable or unreasonably withheld or delayed

6.8 In the event of the Council considering it appropriate to note the provisions of this Agreement against the title to the Application Site at H M Land Registry the Owner hereby consents

6.9 This Agreement is not intended to confer any benefit on any party other than the parties to this Agreement and for that purpose the application of the Contracts (Rights of Third Parties) Act 1999 is expressly excluded

6.10 This Agreement is enforceable by the Council

7. Interest

If any sum payable under the terms of this Agreement is not paid at the time specified herein the party responsible for making the payment shall pay to the Council interest on such sum calculated on a daily basis and compounded quarterly from the due date until payment at the rate of 4% per annum over

Lloyds TSB Bank PLC base rate from time to time in force and such amount shall be recoverable by action as a liquidated sum

IN WITNESS whereof the Owner the Mortgagee and the Council have executed this Agreement as a Deed the day and year first before written

THE SCHEDULE

THE PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

Play Space Contributions

1. Not to commence Development until the Owner has paid the Play Space Contribution to the Council
2. There shall be added to the Play Space Contribution any percentage increase in the Retail Prices Index between the date of its publication prior to the date of the Councils resolution to grant Planning Permission and the date upon which payment to the Council of the Play Space Contribution is made

Sustainable Transport Contribution

3. Not to commence Development until the Owner has paid the Sustainable Transport Contribution to the Council
4. There shall be added to the Sustainable Transport Contribution any percentage increase in the Index between the date of its publication prior to the date of this Agreement and the date upon which payment to the Council of the Sustainable Transport Contribution is made

Restrictions on Parking and Marketing

5. Not to
 - 5.1 use any parking place for vehicles which at the date hereof or at any time in the future is designated by an order made by the Council or

Gloucestershire County Council under Section 45 of the Road Traffic Regulation Act 1984 on any highway within 200 metres from the boundary of the Application Site or

5.2 apply for or use any permit issued by the Council or Gloucestershire County Council for a vehicle to be left in any parking place mentioned in paragraph 5.1 of this Schedule or

5.3 object to any proposal by the Council or Gloucestershire County Council to make any order of the kind mentioned in paragraph 5.1 of this Schedule or

5.4 object to any proposal by the Council or Gloucestershire County Council to make any other order under the Road Traffic Regulation Act 1984 in relation to(name of roads)
Cheltenham or any part of them

6. The Owner shall market the dwellings on the Application Site which do not have an allocated parking space within the Development as

- (i) not suitable for car owners and
- (ii) without the benefit of access to any on street car parking scheme either for residents or any other on street parking

Public Art

7. not to occupy or permit the occupation of any part of the Development on the Application Site until the Owner has provided and installed a Work of Public Art on the Application Site the design and location of which shall have been first approved by the Assistant Director in consultation with the public art panel

8. thereafter to keep the Work of Public Art in a good state of repair and maintenance and ensuring that any damage or deterioration which may occur other than that anticipated (and agreed in advance by the Assistant Director)

as part of the natural weathering process of the structure is rectified within two months of being caused or occurring

9. to ensure that the Work of Public Art remains visible in perpetuity to members of the public in particular to ensure the Work of Public Art is clearly visible by the public as they approach the Application Site

PROVIDED THAT the total cost of the Public Work of Art shall not be less than thousand pounds (£.....)

General

10. To notify the Assistant Director 28 days before Development commences in accordance with clause 3.1.4 of this Agreement

The Council's Covenants

The Council hereby covenants with the Owner as follows:

11. In the event that the Council shall not have applied the Play Space Contribution or the Sustainable Transport Contribution towards their intended purposes and such contribution(s) is Uncommitted within five years from receipt thereof the Council shall forthwith thereafter repay to the Owner (here meaning the party who made the payment to the Council) such part thereof as shall not have been so applied or is Uncommitted together with such interest (if any) as may have been earned thereon at the Lloyds TSB Bank plc base rate from time to time in force from the date of payment until the date of repayment

(THE COMMON SEAL of CHELTENHAM
(BOROUGH COUNCIL affixed hereunto is
(authenticated by the undermentioned person
(authorised by the Council to act for that
(purpose:

Head of Legal Services

SIGNED as a DEED by)
.....)
acting by:)

Director:(signature)(print full name)

Secretary:(signature) (print full name)

DATED _____ 2005

CHELTENHAM BOROUGH COUNCIL

and

.....

A G R E E M E N T

under Section 106 of the Town and Country
Planning Act 1990 in relation to

.....

Cheltenham

P.M. Lewis
Head of Legal Services
Cheltenham Borough Council
P.O. Box 12
Municipal Offices
Promenade
Cheltenham
Glos. GL50 1PP

File Ref.