

DATED

9 MARCH

2023

(1) EASTLEIGH BOROUGH COUNCIL

AND

(2) HAMPSHIRE COUNTY COUNCIL

AND

(3) FIP WEST END LIMITED AND FIP WEST END HOLDINGS LIMITED

AND

(4) LLOYDS BANK CORPORATE MARKETS PLC

SUPPLEMENTAL DEED AND DEED OF VARIATION

Under section 106A of the Town and Country Planning Act 1990
relating to
Chalcroft Business Park, Burnetts Lane, West End,
Southampton, Hampshire SO30 2PA

This Deed is made the 9 day of march 2023

BETWEEN

- (1) **EASTLEIGH BOROUGH COUNCIL** of Eastleigh House, Upper Market Street, Eastleigh, Hampshire SO50 9YN ("the Council")
- (2) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire SO23 8 9UJ ("the County Council")
- (3) **FIP WEST END LIMITED** (Jersey Company registration number 70631) of La Rue des Pres, St Saviour, Jersey JE1 3UP and **FIP WEST END HOLDINGS LIMITED** (Jersey Company registration number 146534) of La Rue des Pres, St Saviour, Jersey JE1 3UP ("the Owner"); and
- (4) **LLOYDS BANK CORPORATE MARKETS PLC** (Company registration number 10399850) whose registered office address is at 25 Gresham Street, London EC2V 7HN ("the Mortgagee")

WHEREAS

- (A) The Council and the County Council are the Local Planning Authority and Highway Authority respectively for the area within which the Site is situated and are the local authorities by whom the obligations in this Deed are enforceable.
- (B) The Owner is the freehold owner of the Site, being part of the land registered at the Land Registry with title absolute under Title Number HP550242 ("the Property").
- (C) The Property has been charged to the Mortgagee pursuant to a Charge dated 8 February 2023.

- (D) Planning Permission has been granted to the Owner by the Council for the development of the Site for the 2018 Consent, the 2020 Consent, and the Unit 19 Consent.
- (E) The obligations of the Owner under the 2018 Consent are secured by the Original Agreement.
- (F) On 1 December 2022 the Owner made the S.73 Application to the Council.
- (G) This Deed of Variation is supplemental to the Original Agreement and is intended to vary the Original Agreement as set out herein.

NOW THIS DEED WITNESSETH as follows:-

1. This Deed is made pursuant to Section 106 and Section 106A of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
2. The obligations created by this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council against the Owner and the Mortgagee and their respective successors in title.
3. To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 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.
4. This Deed comes into effect upon the date of this Deed.
5. This Deed shall bind the Owner and the Mortgagee and their successors in title to each and every part of the Site and assigns subject to Clause 9.5

PROVIDED THAT the Mortgagee shall have no liability under this Deed unless it takes possession of the Site, as mortgagee in possession.

6. This Deed shall be registerable as a local land charge by the Council.

7. Construction of Deed

- 7.1 Unless the context requires otherwise references in this Deed to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Deed.

- 7.2 Where any party to this Deed comprises two or more persons any obligations on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons.

- 7.3 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force.

- 7.4 The headings to this Deed do not and will not by implication form any part of this Deed and shall have no legal force whatsoever.

- 7.5 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa.

- 7.6 References to any party to this Deed shall include the successors in title and assigns to that party and to any person deriving title through or under that party and in the case of the council the successors to their statutory functions.

- 7.7 References to the Site include any part of it.
- 7.8 References to “including” means “including without limitation”.
- 7.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of the act or thing.
- 7.10 The following definitions shall apply to this Deed:

“the Original Agreement”

The agreement made pursuant to section 106 of the Act dated 12 March 2020 made between (1) the Council (2) the County Council (3) FIP West End Limited and (4) the Mortgagee.

“the 2018 Consent”

The planning permission for development of the Site given planning reference number F/18/83945

“the 2020 Consent”

The planning permission for development of the Site given planning reference number X/20/87856

“ the Unit 19 Consent”

The planning permission for development of the Site given planning reference number F/20/89518

“the S.73 Application”

The application made pursuant to Section 73 of the Act to amend Conditions 1, 4, 13, 14, 20, 22 & 26 (and amendments to other conditions) of the 2018 Consent given planning

reference X/22/94322

7.11 All other definitions and expressions in this Deed shall have the meanings given in the Original Agreement.

8. The Owner and the Mortgagee's Covenants

8.1 The Owner and the Mortgagee hereby covenant with and acknowledge to the Council and the County Council so as to bind their interests in the Site to vary the Original Agreement by inserting Clause 14A after Clause 14 of the Original Agreement as follows:

*"14A The Parties agree that if any application arising from the Planning Permission is made pursuant to Section 73 of the Act (the "**Section 73 Application**") and a planning permission is granted pursuant to the Section 73 Application (the "**Section 73 Permission**"), then this Deed shall (unless otherwise agreed as between the Parties) apply mutatis mutandis to the development permitted by the Section 73 Permission (the "**Section 73 Development**") and shall continue to bind the Site as set out in this Deed and all references to the 'Application', 'Planning Permission', 'Site' and the 'Development' in this Deed shall be construed to include the Section 73 Application, the Section 73 Permission and the Section 73 Development, unless the Council reasonably determines otherwise."*

8.2 The Owner and Mortgagee hereby covenant with the Council and County Council that the Original Agreement has full force and effect and applies and attaches to the 2020 Consent.

- 8.3 the obligations contained in the Original Agreement shall continue to apply in full force and effect to the 2018 Consent and shall apply to any planning permission granted pursuant to the S.73 Application so far as those obligations have not already been met or discharged.

9. Declarations

IT is hereby agreed as follows:-

- 9.1 The expressions "the Owner" and "the Mortgagee" shall include their successors in title and assigns and the expression "the Council" and "the County Council" shall include their statutory successors as Local Planning Authority and Highway Authority.
- 9.2 Nothing in this Deed shall derogate from any of the rights powers and duties of the Council pursuant to any of its statutory functions or in any capacity.
- 9.3 The failure of the Council or the County Council at any time to require performance by the other parties of any provisions of this Deed shall in no way affect the right of the Council to require performance of that provision.
- 9.4 The obligations contained in this Deed shall bind the Site.
- 9.5 No person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 9.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the 2020 Consent) granted (whether or not on appeal) after the date of this Deed.

- 9.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.
- 9.8 This Deed may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

10 Invalidity

IF any provision of this Deed shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provisions shall not affect the other provisions of this Deed and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect and the parties hereunto agree to take all reasonable steps to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves as far as reasonably practicable the legal social and environmental objectives of the invalid or unenforceable provision.

11 Costs

The Owner agrees with the Council and County Council to pay on completion of this Deed to the Council and the County Council their reasonable legal costs incurred in entering into this Deed.

12 Notices

ALL notices consents and approvals required to be served on the Council and the County Council shall be sent to the Head of Planning Eastleigh Borough Council and the Director of Universal Services and/or the Director of Hampshire 2050 at the above addresses.

13 Consents

THE Owner hereby warrants and confirms that it has obtained all other necessary permissions and consents required from any other person before entering into this Deed.

14 Change in Ownership

The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Site.

15 Variation

The terms of this Deed shall be capable of being varied by a supplemental agreement executed by the parties.

16 Jurisdiction

This Deed shall be governed by the laws of England and the Courts of England shall have sole jurisdiction in respect of the construction of this Deed and as to the respective rights and liabilities of the parties.

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

EXECUTED AS A DEED BY
AFFIXING THE COMMON SEAL
OF EASTLEIGH BOROUGH
COUNCIL in the presence of:



11870

EXECUTED AS A DEED BY
AFFIXING THE COMMON SEAL
OF HAMPSHIRE COUNTY
COUNCIL in the presence of:-

EXECUTED AS A DEED BY
FIP WEST END LIMITED

acting by:

Director

Director

EXECUTED AS A DEED BY
**FIP WEST END HOLDINGS
LIMITED**
acting by:

Director

Director

EXECUTED as a **DEED** by

as duly authorised attorney for and on
behalf of **LLOYDS BANK CORPORATE**
MARKETS plc in the presence of: