

DATED

15 June 2018

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF
THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO
LAND AT THE HORSE AND JOCKEY HOTEL, 85 MARKET
STREET, EDENFIELD, BL0 0JQ**

between

ROSSENDALE BOROUGH COUNCIL

and

HILBRE PROJECTS LLP

and

WIRRAL PARTNERSHIP (DEVELOPMENTS) LIMITED

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THIS DEED is dated the ^{June} 15th day of 2018

- (1) ROSSENDALE BOROUGH COUNCIL of The Business Centre, Futures Park, Bacup, OL13 0BB (**Council**).
- (2) HILBRE PROJECTS LLP incorporated and registered in England and Wales with company number OC414694 whose registered office is at Partnership Building, Hamilton Street, Birkenhead, CH41 5AA (**Owner**).
- (3) WIRRAL PARTNERSHIP (DEVELOPMENTS) LIMITED incorporated and registered in England and Wales with company number 07882199 whose registered office is at Partnership Building, Hamilton Street, Birkenhead, CH41 5AA (**Mortgagee**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 (TCPA 1990) for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.
- (C) The Mortgagee is the registered proprietor of the charge dated 14 July 2017 referred to in entry number 3 of the charges register of title number LA464491 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (D) On 16 October 2015, Planning Permission was granted by the Council under reference number 2015/0238 subject to the completion of the Original Agreement.
- (E) On 2 November 2015, the Council, and the previous owner, Imperial Consultants Limited, entered into the Original Agreement, regulating development of the Property and is binding on successors in title.
- (F) On 11 July 2017, the Property was transferred to the current Owner.
- (G) The Council granted Planning Permission under reference number 2018/0039 which was an application under section 73 of the TCPA 1990 for variation of condition 2 of the scheme approved under reference 2015/0238 to allow the amendment of the site / parking layout, subject to the making of this Agreement without which the planning would not have been granted.
- (H) The parties have 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 its successors in title
- (I) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.

- (J) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 2 November 2015 between the Council and Imperial Consultants Limited

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.

- 1.3 Clause headings shall not affect the interpretation of this deed.

- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.

- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.

- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 The provisions of the Original Agreement shall remain fully effective and applicable as varied by this Deed for the planning permission granted under reference number 2018/0039 and the terms of the Original Agreement under reference 2015/0238 shall have effect as though the provisions contained in this deed had been originally contained in the Original Agreement.
- 3.2 The definition of "Public Open Space Contribution" contained within clause 1.1 of the Operative Provisions to the Original Agreement shall be deleted and replaced with the following:

"Public Open Space Contribution" Means the sum of £13,660 to be expended towards the provision, modernisation of maintenance of the Edenfield play area and recreational ground.

- 3.2 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANTS TO THE COUNCIL

The Owner and the Mortgagee covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. MORTGAGEE'S CONSENT

The Mortgagee consents to the completion of this deed and acknowledges that from the date of this deed the Property shall be bound by the terms of this deed, as if it had

been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

6. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

7. ENDORSEMENT

Promptly following completion of this deed the Council shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated _____ and made between the Council and the Owner and the Mortgagee.

8. COUNCIL'S COSTS

The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed in the sum of £790.

9. VALUE ADDED TAX

9.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

9.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

10. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

11. GOVERNING LAW

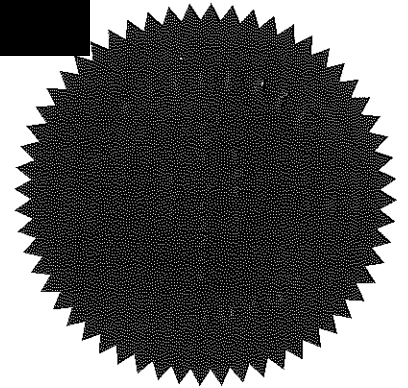
This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The common seal of Rossendale Borough Council was affixed to this document in the presence of:



Authorised signatory



No. IN SEAL
REGISTER
115388

Executed as a deed by
Hilbre Projects LLP
acting by a Director



Authorised signatory

In the presence of:



SIGNATURE OF WITNESS

NAME of witness

ADDRESS of witness

OCCUPATION of witness



Executed as a deed
Wirral Partnership (Developments)
Limited
acting by a Director
In the presence of:

Authorised signatory



SIGNATURE OF WITNESS

NAME of witness

ADDRESS of witness

OCCUPATION of witness

