DCSEC106. 11/00100/CONDIT CH

DATE 17 May 2011

MRP HINCKLEY NO ILP

- and -

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

- and -

CLYDESDALE BANK PLC (TRADING AS YORKSHIRE BANK)

- and -

WESTLEIGH DEVELOPMENTS LIMITED

AGREEMENT made pursuant to Section 106A
of the Town and Country Planning Act 1990 (as amended)
relating to land at the junction of Rugby and Hawley Road Hinckley

(Application reference 11/00100/CONDIT)

Hinckley and Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
Leicestershire LE10 1BZ

THIS AGREEMENT is made the 17 day of May 2011

BETWEEN

(1) MRP Hinckley General Partner No. 1 Limited (Co. Reg. No. 649867) of Venthams Limited, Lincolns Inn Fields, London WC2A 3LJ as general partner and MRP NOMINEES LIMITED (Co. Reg. No. 64937000) of Venthams Limited, Lincolns Inn Fields, London WC2A 3LJ as nominees of MRP Hinckley No. 1 LP (`the Owner`), and

(2) HINCKLEY AND BOSWORTH BOROUGH COUNCIL of Council Offices Argents Mead Hinckley LE10 1 BZ (`the Borough Council`) and

(3) CLYDESDALE BANK PLC (Scot. Co. Reg. No. SC1111) of Yorkshire Bank 20 Merrion Way, Leeds LS2 trading as Yorkshire Bank (`the Mortgagee`),and

(4) WESTLEIGH DEVELOPMENTS LIMITED (Co. Reg. No. 02165362) of Tudorgate, Grange Business park, Enderby Road, Whetstone, Leicester LE8 6EP (`Westleigh`)

WHEREAS

A. The Borough Council is the Local Planning Authority for the purposes of the Act.

B. The Owner is seized of the Land for an estate in fee simple free from encumbrances

C. The Mortgagee is mortgagee of the Land under a legal mortgage dated 10 April 2008 and made between the Owner and the Mortgagee

D. Westleigh have signed a conditional contract to purchase the Residential Development

E. The Owner, , the Mortgagee and Westleigh entered into a unilateral undertaking dated 25 January 2011 enforceable by the Borough Council ("the UU") (a copy of which is appended to this Agreement) and an Agreement with the Borough Council ('The Principal Agreement') (a copy of which is appended to this Agreement) dated 25 January 2011 both pursuant to Section 106 of the Act relating to the development of the Land pursuant to planning application reference 10/00847/FUL ('The First Permission')

F. Westleigh have applied to the Borough Council to amend some of the provisions of the Principal Agreement and the Borough Council has agreed to amend the Principal Agreement as set out herein

G. Westleigh have also applied to the Borough Council pursuant to Section 73 of the Act under planning application reference 11/00100/CONDIT (`the Second Permission`) to vary condition 2 of the First Permission (`Condition 2`)

H. The Parties hereto acknowledge that approval of the application to amend Condition 2 would constitute the granting of a new planning permission for the development referred to in the Principal Agreement and the U/U , save for the agreed amendments to Condition 2

I. The Borough Council has resolved by means of the Second Permission to approve the application to amend Condition 2 subject to conditions and subject to the Owner, the Mortgagee and Westleigh entering into the obligations in this Agreement ('The Second Agreement') in relation to the provisions of the Principal Agreement and the UU without which approval of the application to amend Condition 2 would not have been granted

1. NOW THIS DEED WITNESSES as follows:-

1.1 The words and expressions in this Agreement shall where the context so requires or admits have the meaning as defined in the Principal Agreement annexed hereto save as amended or varied by this Agreement

2. STATUTORY BASIS

This Agreement is made pursuant to the provisions of Section 106 of the Act with the intention that the obligations entered into by the Owner, the Mortgagee and Westleigh bind their respective successors in title being Owners for the time being of the Owner's or the Mortgagee's or Westleigh's interests in the Land or any part thereof

3. CONDITIONALITY

3.1 This agreement is conditional upon:-

(i) the grant of the Second Permission; and

(ii) the commencement of Development pursuant to the Second Permission

4. PLANNING OBLIGATION

4.1 Each obligation given herein by the Owner, or by the Mortgagees or by Westleigh is a planning obligation for the purposes of Section 106 of the Act and is enforceable by the Borough Council

5. OWNER'S COVENANT

5.1 The Owner and Westleigh undertake with the Borough Council that save as may be varied by this Agreement the terms and obligations set out in the Principal Agreement and the UU shall continue in full force and effect and shall be deemed by virtue of this Agreement to apply to and to bind the Land in relation to Development pursuant to the Second Permission

6. MODIFICATION OF PRINCIPAL AGREEMENT

6.1 The parties hereto agree that the wording set out hereunder shall modify the obligations of the Owner the Mortgagee and Westleigh set out in Schedule 3 of the Principal Agreement

6.2 The Owner's obligations set out in paragraph 2 of Schedule 3 of the Principal Agreement shall be modified as follows:-

6.2.1 Delete the existing paragraph 2(f) of Schedule 3;

6.2.2 In the section in Schedule 3 headed 'AND FURTHER PROVIDED THAT'. In paragraph (c) in the paragraph immediately below (c)(ii) delete the word 'three' in the phrase 'not less than three months' and substitute therefore the word 'two';

6.2.3 In the following paragraph (a) delete the word 'best' in the phrase 'use its best endeavours' and substitute therefor the word 'reasonable'

7. MORTGAGEE

7.1 The Mortgagee consents to the Owner and Westleigh entering into this Agreement and acknowledges that the Principal Agreement and the UU as modified by this Agreement bind the proposed development permitted under the Second Permission

7.2 The Mortgagee shall only be liable for any breach of the terms of this Agreement if it has itself caused the breach whilst mortgagee in possession. It shall not be liable for any pre-existing breach although for the avoidance of doubt any of its successors in title shall be so liable

8. GENERAL

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

8.2 Any dispute under or arising out of the operation of this Agreement or the Principal Agreement may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 (as amended for time to time) and any arbitrator's costs of the determination shall be payable by the parties to the dispute in such proportion as the arbitrator shall determine and failing such determination shall be borne by the parties in equal shares

8.3 Any notice, agreement, consent or approval to be given under the terms of this Agreement shall be in writing and sent by ordinary post and

8.3.1 In the case of the Council to be addressed to the Head of Planning Council Offices Argents Mead Hinckley LE10 1BZ, and

8.3.2 In the case of the Owner and Westleigh and the Chargee shall be sent by ordinary post to their respective registered offices

8.4 The Owner shall pay the Council's legal costs in the sum of £750.00 in respect of the preparation and completion of this Agreement

8.5 This agreement may be executed in separate counterparts and such counterparts when executed shall be an original.

IN WITNESS THE Council the Owner the Mortgagee and Westleigh have executed this Agreement as a Deed on the day and year first before written.

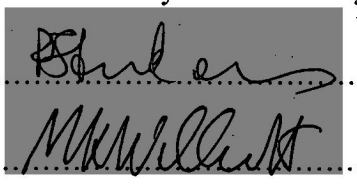
THE SCHEDULE

The Land

The Land at the junction of Hawley Road and Rugby Road Hinckley as defined in the Principal Agreement and shown edged red on the Plan annexed thereto

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

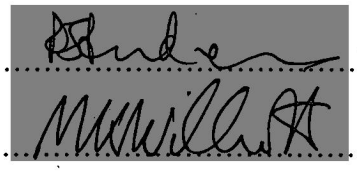
SIGNED as a Deed by MRP Hinckley General Partner No. 1 Limited as general partner of MRP Hinckley No 1 LP acting by two Directors:



.....Director

.....Director

SIGNED as a Deed by MRP NOMINEES LIMITED as nominees of MRP Hinckley No 1 LP acting by two Directors:



.....Director

.....Director

THE COMMON SEAL of HINCKLEY AND BOSWORTH BOROUGH COUNCIL was hereunto affixed in the presence of:-

SIGNED as a Deed by CLYDESDALE BANK PLC in the presence of: