

DATED 19th January 2010

STROUD DISTRICT COUNCIL (1)

-and-

COLETHROP FARM LIMITED (2)

-and-

CREST NICHOLSON OPERATIONS LIMITED (3)

**DEED OF VARIATION TO A
SECTION 106 AGREEMENT
DATED 4 FEBRUARY 2008**

relating to

a mixed use development on Land at Hunts Grove,
Hardwicke, Gloucestershire

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THIS DEED is made the 19th day of January 2010

BETWEEN

- (1) **STROUD DISTRICT COUNCIL** of Council Offices Ebley Mill Stroud Gloucestershire GL5 4UB ("**the Council**")
- (2) **COLETHROP FARM LIMITED** (Company Registration Number 3329992) care of Woodward Hale of 38 Dollar Street Cirencester Gloucestershire GL7 2AN ("**the Owner**")
- (3) **CREST NICHOLSON OPERATIONS LIMITED** (Company Number 1168311) of Crest House Pyrcroft Road Chertsey Surrey KT16 9GN ("**the Developer**")

WHEREAS

- (A) The Council and the Owner together with Marcus Beresford Heywood and Crest Nicholson Regeneration Limited entered into a Deed pursuant to section 106 of the Town and Country Planning Act 1990 ("**the Act**") Sections 111 and 120 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 dated 4 February 2008 ("**the First Agreement**") pursuant to which various planning obligations were given and the parties hereto have agreed to vary the First Agreement in the manner set out in clause 4 of this Agreement
- (B) The Council is the local planning authority by whom the planning obligations contained in the First Agreement as varied by this Agreement are enforceable for the area within which the Site is situated
- (C) The Owner is the registered proprietor of ^{of parts of} the Site with Title Absolute registered at the Land Registry under title numbers GR192357 and ~~GR322475~~ and GR340276 and registered proprietor of a leasehold interest under title number GR234869 referred to in Recital 2 of the First Agreement against whom the planning obligations set out in the First Agreement as varied by this Agreement are enforceable
- (D) The Developer has acquired the leasehold interest previously vested in Crest Nicholson Regeneration Limited in part of the Site registered at the Land Registry under title number GR239420 and by a transfer dated 15 December 2009 has acquired and is to be registered as the freehold proprietor of part of the Site within title number GR192357 and against whom the planning obligations set out in the First Agreement as varied by this Agreement are enforceable
- (E) Colethrop Farm Limited has the benefit of a legal charge dated 15 December 2009 in respect of that part of the Land within title number GR192357 acquired by the Developer

- (F) Following a public local inquiry held in respect of the Application the Secretary of State for Communities and Local Government granted outline planning permission for the Development subject to conditions ("the Planning Permission")
- (G) An application has been made to the Council for the Section 73 Permission

NOW THIS DEED WITNESSES as follows:-

1. STATUTORY PROVISIONS

The parties to this Agreement hereby agree that:

- 1.1 this Agreement is made pursuant to Section 106A of the Act with the intent to bind the Site and
- 1.2 the obligations in this Agreement are planning obligations for the purposes of the Act which are enforceable by the Council

2. INTERPRETATION

2.1 In this Agreement where the context so requires:-

- 2.1.1 the singular includes the plural and vice versa
- 2.1.2 references to clauses are references to clauses in this Agreement except where otherwise specified
- 2.1.3 title headings to the clauses are for convenience only and shall not affect the interpretation of this Agreement
- 2.1.4 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force
- 2.1.5 the expressions "the Council" "the Owner" and "the Developer" shall include their respective successors in title and assigns

3. COMMENCEMENT

The provisions of this Agreement shall have effect from the date of this Agreement

4. VARIATION OF THE FIRST AGREEMENT

- 4.1 The parties to this Agreement hereby agree with the Council in its capacity as local planning authority that the First Agreement shall be varied as follows and save as varied below the First Agreement shall remain in full force and effect
- 4.2 The First Agreement shall be varied as follows:

- 4.2.1 the definition of "Church Site Marketing Period" shall be deleted and replaced with:
- ""Church Site Marketing Period" means 3 years from the date at which the 351st Dwelling has been constructed"
- 4.2.2 the definition of "Development" shall be deleted and replaced with:
- ""Development" means the development of the Site pursuant to the Planning Permission or the Section 73 Permission"
- 4.2.3 the definition of "Dwelling" shall be deleted and replaced with:
- ""Dwelling" means a dwelling (including a house flat or maisonette to be constructed pursuant to the Planning Permission or the Section 73 Permission"
- 4.2.4 the definition of "Occupation and Occupied" shall be deleted and replaced with:
- ""Occupation and Occupied " means occupation for the purposes permitted by the Planning Permission or the Section 73 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"
- 4.2.5 the definition of "Owner" shall be deleted and replaced with:
- ""Owner" means Colethrop Farm Limited"
- 4.2.6 the definition of "Phase" shall be deleted and replaced with:
- ""Phase" means each separate phase or section of the Development as approved by Council in writing"
- 4.2.7 the definition of "Phasing Plan" shall be deleted and replaced with:
- ""Phasing Plan" means the plan to be approved by the Council in writing pursuant to the Planning Permission or the Section 73 Permission"
- 4.2.8 the definition of "Planning Permission" shall be deleted and replaced with:
- "Planning Permission" means the outline planning permission granted for the Development by the Secretary of State for Communities and Local Government by a letter dated 10 July 2008"
- 4.2.9 there shall be added the following definition:

""Section 73 Permission" means the outline planning permission that may be granted by the Council pursuant to Section 73 of the Act to vary the Planning Permission and given reference number S.09/1692/VAR"

4.2.10 clause 4.1 shall be deleted and replaced with

"4.1 This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

SAVE FOR the provisions of clause 7.1 (legal costs) clause 7.4 (registration as a local land charge) clause 13 (jurisdiction) and clause 14 (delivery) which shall come into effect immediately upon completion of this Deed

4.2.11 the first clause 7.2 shall be deleted and replaced with:

"7.2 The Developer shall pay to the Council the following sums as a management charge for monitoring compliance with this Agreement

7.2.1 twenty five thousand pounds (£25,000) upon the Commencement of the Development

7.2.2 twenty five thousand pounds (£25,000) upon the Occupation of the 75th Dwelling

7.2.3 twenty five thousand pounds (£25,000) upon the Occupation of the 150th Dwelling"

4.2.12 the following clauses shall be renumbered as follows:

7.2 to 7.3

7.3 to 7.4

7.4 to 7.5

7.5 to 7.6

7.6 to 7.7

7.7 to 7.8

4.2.13 clause 7.8 (as renumbered) shall be varied by adding "or the Section 73 Permission" after "Planning Permission" on line two

4.2.14 clause 7.12 (as renumbered) shall be varied by adding "or the Section 73 Permission" after "Planning Permission" on line two

- 4.2.15 clause 10.1 shall be varied by adding "or decreased" after "be increased" on line one
- 4.2.16 clause 15.1 shall be varied by adding "or the Section 73 Permission" after "Planning Permission" in line two
- 4.2.17 clause 15.2 shall be varied by adding "or the Section 73 Permission" after "Planning Permission" on line two
- 4.2.18 the Fifth Schedule shall be varied by deleting the text set out in column 2 of the table below and replacing it with that set out in column 3 of the table below

Paragraph Number	Original Text	New Text
2.4	"first Occupation of a Dwelling"	"Occupation of the 350 th Dwelling"
6.6	"100 Dwellings"	"350 Dwellings"
6.7	"The Owner and/or the Developer shall pay to the Council 50% of the Community Composting Scheme Contribution one calendar year after payment has been made pursuant to paragraph 6.6"	"Occupation of no more than 351 Dwellings shall be permitted until 50% of the Community Composting Scheme Contribution has been paid to the Council"
7.1	"first Occupation of the Development"	"Occupation of the 350 th Dwelling"
10.1.2	"300 Dwellings"	"350 Dwellings"

of 4.2.19 Clause 7.10 shall be varied by adding the words "nor shall this Deed be enforceable against any mortgagee or charge (unless in possession) of any registered social landlord who has or will have any interest in any affordable housing to be constructed on the site" at the end thereof

5. **MISCELLANEOUS**

- 5.1 This Agreement shall be registered as a Local Land Charge for the purposes of the Local Land Charges Act 1975 by the Council
- 5.2 Nothing in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

6. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is agreed and declared that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

7. **LEGAL COSTS**

The Developer and/or the Owners hereby agree with the Council that they will upon the execution hereof pay the Council's legal charges in the sum of one thousand eight hundred pounds (£1800.00)

8. **INDEMNITIES**

8.1 The Developer hereby indemnifies the Owner against all obligations under the First Agreement as varied by this Deed and conditions contained in the Planning Permission and Section 73 Permission that are triggered by the Developer purchasing and developing any part of the Site

8.2 The Developer hereby indemnifies the Owners against any obligations under the First Agreement as varied by this Deed and conditions contained in the Planning Permission or the Section 73 Permission which are not in the absolute control of the Owners and are effective prior to Commencement of Development

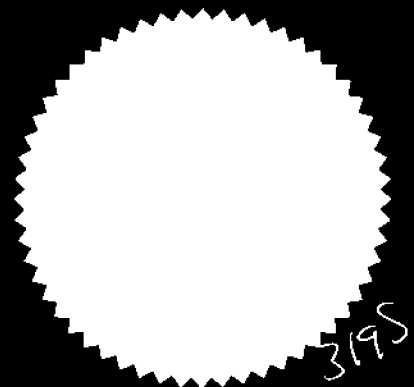
9. **CHARGEES CONSENT**

Colethrop Farm Limited hereby consents to the Developer entering into this Deed (in respect of that part of the Land referred to in Recital (E) of this Deed) and acknowledges that the terms and provisions of the Third Agreement as amended by this Deed shall bind their interest in that part of the Land

EXECUTED AS A DEED in the manner hereinafter but not delivered until the day and year first written

The COMMON SEAL of STROUD)
DISTRICT COUNCIL)
was hereunto affixed in the presence of)

Authorised Signatory



SIGNED AS A DEED by)
COLETHROP FARM LIMITED)
in the presence of:)

Director

Secretary

SIGNED AS A DEED by)
CREST NICHOLSON OPERATIONS)
LIMITED acting by two Directors or by)
one Director and the Company Secretary)

Director

Director /Con , , ,