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Planning Agreement under Section 106 of the Town and
Country Planning Act 1990 relating to land at Upper Rissington,
Gloucestershire

Dated 29th January 2010

Cotswold District Council
(Council) (1)

Bank of Scotland Plc
(Mortgagee)

Reland (Rissington) Limited
(Owner) (3)

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Agreement

Dated 29th January 2019

Between

- (1) **Cotswold District Council ("Council")** of Trinity Road, Cirencester, Gloucestershire GL7 1PX;
- (2) **Bank of Scotland Plc (Mortgagee)** of 21-23 Hill Street, Mayfair, London W1J 5JW; and
- (3) **Reland (Rissington) Limited ("Owner")** registered in England with number 031986176 whose registered office is at Ashley House, Ashley Road, Epsom, KT18 5AZ

Recitals

- A The Council is the Local Planning Authority for the purposes of the Act for the District of Cotswold in the County of Gloucester.
- B The Owner is the registered proprietor at the Land Registry with freehold title absolute for that part of the Site under Title Numbers GR187674 GR239239 GR243832; and GR243535
- C On the 24 December 2008 the Owner submitted the Planning Application to the Council for the Development.
- D The Council failed to determine the Planning Application within the required period and the Owner has lodged an appeal to the Secretary of State for the determination of the Planning Application.
- E The Planning Application is to be considered at a public inquiry commencing on 19th January 2010 for 8 days.
- F The Owner is willing to enter into this Agreement pursuant to S106 of the Act with the Council subject to the conditions set out in this Agreement at clause 4.
- G The Mortgagee agrees for the site to be bound by the obligations contained in this Agreement.

It is agreed:

1 Definitions

In this Agreement the following words and expressions shall where the context so requires or admits have the following meaning:

Act means the Town and Country Planning Act 1990 or any other statutory re-enactment or amendment thereto

Adoptable Standard means the standard to which the Public Open Spaces are to be Completed to before their dedication for public use

Appeal means the appeal lodged to the Secretary of State pursuant to Section 78 of the Act following the Council's non determination of the Planning Application and given appeal reference APP/F1610/A/09/2112497/NWF

Childcare Uses means any use providing a crèche facility or nursery care facilities for children of pre-school age including care for children outside of usual school hours and during holiday periods.

Community Infrastructure means the facilities to be provided for the Childcare Uses, the Retail Units and the Public House collectively

Community Infrastructure Marketing Strategy means a plan outlining a set of advertising and promotional procedures by which operators of the Community Infrastructure will be secured as tenants or owners of the buildings or accommodation provided for such uses as contained in Schedule 2 such marketing strategy shall be operated for 2 (two) years following its first implementation

Community/Sports Hall means the new community/sports facility to be provided in accordance with the approved Community/Sports Hall Specification

Community/Sports Hall Maintenance Sum means the 5 (five) year Maintenance Sum payable in respect of the Community/Sports Hall if it is transferred to the Parish Council in accordance with the terms of this Agreement such sum shall be calculated in accordance with the Maintenance Formula

Community/Sports Hall Management Plan means a scheme or schemes for the long-term management of the Community/Sports Hall

Community/Sports Hall Transfer means the Transfer of the Community/Sports Hall premises pursuant to the terms of this Agreement in the form which is set out in Schedule 6

Community/Sports Hall Specification means the indicative specification described in Schedule 5

Complete or Completed means the completion of works to such a stage that a certificate of practical completion could be issued

Development means the development permitted by the Planning Permission

Employment Uses means uses for any purpose falling within B1 of the Town and Country Planning (Use Classes) Order 1987 (as may be amended from time to time)

Expert means an expert determined in accordance with the provisions of clause 15 of this Agreement

Identified or Identify means with regard to any area of land that its precise location and boundaries shall have been ascertained as required

Implement Implementing Implementable or Implementation means the carrying out of a material operation in accordance with Section 56(4)(a) to (d) of the Act pursuant to the Planning Permission provided that for the purposes of this Agreement the following shall be deemed not to be Implementation: any archaeological works, works of excavation; preliminary site works; demolition; site clearance; providing services and statutory undertakers equipment; diversions; site or soil investigations; the erection of any hoardings and fences or other site security measures including the provision of any necessary site compounds required in relation to the carrying out of those works

Interest means the best rate of interest which the Council is able to obtain for its deposit accounts

Maintenance Formula means the formula for calculating the 5 year maintenance cost for the Community/Sports Hall and Public Open Space which shall be as follows:

- (a) the Owner obtaining 3 separate assessments of the estimated annual maintenance cost for the relevant element;
- (b) adding the total of the 3 assessments together and dividing the total sum by 3 to obtain the average figure

- (c) multiplying the figure derived from paragraph (b) above by 5 to achieve the 5 year maintenance sum

Maintenance Period means a period of 12 (twelve) months following the satisfactory completion of (the relevant part of) the Public Open Space or Community/Sports Hall during which the Public Open Space or Community/Sports Hall will be maintained prior to handover of responsibility for their maintenance to the Council or such other body as may be agreed

Maintenance Sum means the sum to be calculated in accordance with the Maintenance Formula

Management Company means a management company or companies appointed by the Owner for the purposes of managing and maintaining any one or more of the Public Open Space or the Community/Sports Hall, and such other areas of the Development as is appropriate

Market Units means Residential Units comprised within the Development which are to be sold on the open market free of any restrictions on price

Masterplan means the illustrative Masterplan for the Development which forms part of the Planning Application

Occupation means beneficial occupation of the Residential Units on the Development other than occupation for the purposes of fitting out or marketing and Occupy and Occupied shall be construed accordingly

Offer means to expose land to the market in the most appropriate manner to effect the disposal (by way of the sale of the freehold estate or the grant of a long leasehold interest therein (the relevant lease reserving a ground or nominal rent)) at the best price reasonably obtainable in accordance with the definition herein of "Market Value" or to effect the letting thereof under a rack-rented lease at the best rent reasonably obtainable in accordance with the definition herein of "Market Rent" such exposure to the market (without prejudice to the generality of the foregoing) to be through the agency of a reputable firm of estate agents regularly dealing with the disposal of land of similar type to the said land and "Offer" and "Offered" shall be construed accordingly

Owner shall include its successors in title.

Parish Council means Upper Rissington Parish Council

Party or Parties means the Council (1) the County Council (2) the Owner (3) and Parties means all of them

Plan 1 means the Plan attached to this Agreement illustrating the location of the Site outlined in red and the indicative location of the Community/Sports Hall which shall be located within the area shaded yellow

Planning Application means the outline application dated the 24 December 2008 and submitted by the Owner to the Council under reference number 08/03697/OUT for the partial demolition of the former military buildings commercial buildings and redevelopment to provide up to 368 dwellings, up to 3,140 SQM of D1 and up to 2,050 SQM of A1 – A5 floorspace, up to 7,100 SQM conversion of the former Officers' Mess Quarters, the former Station Headquarters and the block for residential purposes, conversion of the former Guardhouse and the Former Sergeants' Mess provision of public open space, associated junction improvements and other associated works.

Phase means a phase of the Development as defined by a Reserved Matters Approval

Planning Permission means the Planning Permission granted pursuant to the Planning Application by the Secretary of State or any variation thereto granted pursuant to section 73 of the Act or any detailed Planning Permission granted for substantially the same development on the Site

Public Art means discrete 'one off' pieces of art to be provided in accordance with the approved Masterplan unless otherwise agreed with the Council

Public House means a pub/restaurant facility as shall be defined in the Planning Permission

Public Open Space means land within the Development consisting of those open areas for recreational and amenity use which are to be made available within the Development for use by the public (and/or such other area(s) agreed with the Council) to include play facilities agreed between the Owner and the Council

Public Open Space Management Plan means a scheme or schemes for the long-term management of each of the Public Open Space

Public Open Space Maintenance Sum means the 5 year maintenance sum to be calculated in accordance with the Maintenance Formula which is payable to the transferee in accordance with the terms of this Agreement

Public Open Space Transfer means the Transfer of the Public Open Space pursuant to the terms of this Agreement such transfer shall be subject to a restriction that the Public Open Space shall only be used for recreational purposes and shall not be built upon without the Owner's written consent

Reserved Matters Application means any application for reserved matters approval to the Council pursuant to the Planning Permission

Reserved Matters Approval means the consent granted pursuant to a Reserved Matters Application

Reserved Matters Area means part of the Site to which a Reserved Matters Application or Approval relates

Residential Units means the residential units permitted by the Planning Permission

Retail Units means units for retail, shops or such similar uses as shall be defined in the Planning Permission and shall include but not be limited to uses within Class A1, A2, A3, A4 and A5

Review Procedure means the procedure for the review of certain documents or proposed courses of action set out in Clause 16

Secretary of State means the Secretary of State for Communities and Local Government

Service Supplier means a statutory undertaker or other supplier of Services

Site means the land the subject of the Planning Application shown edged red on Plan 1

Transfer means a transfer of a freehold interest or grant of a leasehold interest and Transferred shall be construed accordingly (with the choice of whether the transfer is freehold or leasehold to be at the absolute discretion of the Owner)

Village Hall Lease means the lease for the existing village hall which is granted to the Parish Council

2 Statutory Provisions

- 2.1 This Agreement is entered into pursuant to Section 106 of the Act and S111 of Local Government Act 1972 and the relevant clauses herein shall be deemed to be planning obligations (**Planning Obligations**) in respect of the Site for the purposes of those sections but without prejudice to all or any other means of enforcing them at law in equity or by statute and shall be registered as a local land charge.

- 2.2 Nothing in this Agreement shall be construed as restricting the exercise by the Council or County Council of any powers exercisable by it under the Act or any other powers vested in the Council or County Council under the statute byelaw statutory instruments order and regulations (already or in the future to be passed) or any government department public or competent authority or Court of competent jurisdiction.
- 2.3 No failure or delay by the Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right power or remedy by the Council.
- 2.4 The Owner warrants that it has power to carry out the Planning Obligations and the Development.
- 2.5 The planning obligations in this Deed shall not be binding on any Service Supplier, individual purchasing a Residential Unit, a unit of Employment Use or Retail Unit or Public House or Healthcare Facility.
- 2.6 The Owner shall give to the Council seven days written notice of his intention to commence development and shall confirm in writing within seven days following commencement that development has commenced PROVIDED THAT failure to provide either of the said notifications shall not render this Agreement inoperative.
- 2.7 If any individual clause sub-clause or schedule in this Agreement is subsequently held to be unenforceable by a Court the parties agree that the offending clause sub-clause or schedule shall cease to be binding and will be severed from the Agreement PROVIDED THAT the severing of such a clause sub-clause or schedule shall not affect the continuing enforceability of the remainder of the Agreement.
- 2.8 If the Planning Permission expires without commencement of the Development or is quashed revoked or otherwise withdrawn by any statutory procedure without the consent of the Developer this Agreement shall cease to have effect.

3 Enforcing Authority

- 3.1 The Council is the Local Planning Authority for the purposes of Section 106 of the Act by which the covenants and obligations created by this Agreement are enforceable.

4 Conditions

- 4.1 This Agreement is conditional upon and shall not take effect unless and until Planning Permission is granted by the Secretary of State pursuant to the Appeal
- 4.2 Subject to clause 4.1 above Clause 5 and the Schedule(s) to this Agreement are strictly conditional upon Implementation pursuant to the Planning Permission.

5 Obligation

Subject to the provisions of this Agreement the Owner and the Council hereby covenant with the Owner and the Council as the case may be in the terms of Schedule 1.

6 Revocation

This Agreement shall cease to have any force and effect in respect of any then outstanding obligations in the event of the Planning Permission being quashed revoked withdrawn or relinquished.