

DATED 16<sup>th</sup> November 2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

(2) HAMPSHIRE COUNTY COUNCIL

(3) EI GROUP LIMITED

and

(4) CO-OPERATIVE GROUP FOOD LIMITED

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**SECTION 106 AGREEMENT**

Under Section 106 Town and Country Planning Act 1990  
relating to land at Imperial Palace, 37 Belmont Grove, Havant, PO9 3PT

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Legal Services  
Havant Borough Council  
Public Service Plaza  
Civic Centre Road  
Havant  
PO9 2AX  
Ref: HBC/2020/RB//SS/013584

THIS AGREEMENT is made on

16<sup>th</sup> November

2021

**BETWEEN:**

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (**County Council**);
3. **EI GROUP LIMITED** who is incorporated and registered in England and Wales with company number 02562808 and whose registered office is at 3 Monkspath Hall Road, Shirley, Solihull B90 4SJ (**Owner**); and
4. **CO-OPERATIVE GROUP FOOD LIMITED** who is a Registered Society under the Co-operative and Community Benefit Societies Act 2014 with Registration Number 26715R and whose registered office is at 1 Angel Square, Manchester, M60 0AG (**Developer**).

**BACKGROUND**

- (A) For the purposes of the Act, the Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (B) The County Council is also the local highway authority for Hampshire for the area within which the Land is situated (save for trunk roads and special roads) and the Transport Authority for Hampshire for the purpose of the Transport Act 1985 and 2000.
- (C) The Owner is the freehold owner of the whole of the Land.
- (D) The Application has been submitted by Developer to the Council for permission to develop the Land in accordance with the Planning Permission.
- (E) The Developer has an interest in the Land by virtue of an agreement to lease made between the Owner (1) and the Developer (2) dated 21<sup>st</sup> February 2020.
- (F) The Owner and the Developer enter into this Agreement in anticipation of the grant of Planning Permission being subject to the Owner and the Developer entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (G) 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 and the County Council against the Owner and the Developer and their successors in title.

The parties agree as follows:

**1 DEFINITIONS**

From the date of this Agreement unless the context otherwise requires, the following definitions apply to this Agreement:

**"the Act"** means the Town and Country Planning Act 1990.

|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Agreement"</b>                     | means this deed of agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Application"</b>                   | means the application submitted by the Developer to the Council for planning permission to carry out the Development and given the Council's reference number APP/20/00316.                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>"Commencement of Development"</b>   | means the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of: site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services on the Land and "Commence", "Commencement" and similar expressions shall be construed accordingly.    |
| <b>" Completion Certificate"</b>       | means a certificate issued by the County Council pursuant to a Highways Agreement confirming that the Highway Works have been completed in accordance with the Highway Agreement                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"County Council Monitoring Fee"</b> | means the sum of £500 payable to the County Council in respect of monitoring of obligations to the County Council                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Development"</b>                   | means the change of use from Class A3 (restaurant) to Class A1 (foodstore) with single storey extensions and alteration to access of the Land and in accordance with the Planning Permission.                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Expert"</b>                        | means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 10 to determine a dispute.                                                                                                                                                                                                                                                                                     |
| <b>"Highway Agreement"</b>             | means an agreement made under section 278 and/or section 38 of the Highways Act 1980 to secure the Highway Works.                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Highway Works"</b>                 | means the highways works comprising: <ul style="list-style-type: none"> <li>(a) pedestrian improvements to access the Development, consisting of three new sets of tactile paving and dropped kerbs to the north and east of the Development, together with a further set of tactile paving to the north of the site access and shown in principal on drawing number SK02 attached at Appendix 2 to this Agreement; and</li> <li>(b) site access widening works as shown in principal on drawing number 30 Revision C attached as Appendix 2 to this Agreement.</li> </ul> |

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Index"</b>               | means the Consumer Price Index as published by the Office of National Statistics.                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Interest"</b>            | means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time.                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"Land"</b>                | means the freehold property being land known as the Imperial Palace, 37 Belmont Grove, Havant, PO9 3PT registered at the Land Registry with title number HP473221 and shown edged red on the Plan.                                                                                                                                                                                                                                                                                                            |
| <b>"Monitoring Fee"</b>      | means the sum of £250 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person(s) whose function is to monitor, coordinate and enforce the obligations contained within this Agreement.                                                                                                                                                                                                                                                    |
| <b>"Occupation"</b>          | means occupation for the purposes permitted by the Planning 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 and "Occupy" shall be similarly construed.                                                                                                                                                                                                        |
| <b>"Plan"</b>                | means the site location plan annexed at Appendix 1 to this Agreement with drawing number 163094_AP_20.                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Planning Permission"</b> | means the conditional planning permission that may be granted in pursuance of the Application.                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>"TRO Contribution"</b>    | means the sum of £5000 payable to the Council to be applied towards the implementation (which reference shall include all connected administration, supervision and the carrying out) of a traffic regulation order(s) made pursuant to the Road Traffic Regulation Act 1984 imposing parking or such other restrictions as may be necessary to ensure that any parking or traffic generated from the Development does not interfere with the capacity, operation and/or safety of the local highway network. |
| <b>"Working Day"</b>         | means a day other than a Saturday, Sunday or public holiday in England.                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## **2 INTERPRETATION**

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.

- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council and the County Council include any successor local planning authority exercising planning powers under the Act and any successor highway authority in respect of the County Council.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

### **3 STATUTORY PROVISIONS**

- 3.1 This Agreement is made by deed pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of that section of the Act and are enforceable by the Council and the County Council.
- 3.3 To the extent that any of the obligations contained in this Agreement 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.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

### **4 COMMENCEMENT**

This Agreement shall have effect from the date hereof.

### **5 OWNER AND DEVELOPER COVENANTS**

The Owner and the Developer covenant with the Council and the County Council to comply, observe and perform the obligations as set out in this Agreement.

## **6 REGISTRATION**

This Agreement shall be registered by the Council as a local land charge

## **7 RELEASE**

- 7.1 No party shall be bound by the terms of the Agreement nor shall they be liable for any breach of any covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.
- 7.2 No planning obligation contained in this Agreement shall be binding on any land held by any of the statutory utilities for their statutory functions.

## **8 NOTICES**

- 8.1 The Owner and the Developer agree to give the Council and the County Council written notice within ten Working Days of any change in ownership of their interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

8.1.1 registered office where the transferee owner is a company

8.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan except in the case of a transfer of the whole of the freehold interest in the Land in which situation no plan shall be required.

- 8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.
- 8.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council and/or the County Council shall be marked for the attention of the Head of Legal Services.
- 8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:
- 8.4.1 if delivered by hand, at the time of delivery; or
- 8.4.2 if sent by recorded delivery, at the time delivery was signed for.
- 8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.
- 8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## **9 COSTS OF THIS AGREEMENT**

Upon completion of this Agreement the Developer shall pay to the Council and the County Council their reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement in the sum of £                      together with the County Council's development control costs of £                      and the County Council Monitoring Fee.

## **10 DETERMINATION OF DISPUTES**

- 10.1 Subject to clause 10.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than ten Working Days written notice requiring the dispute to be determined under this clause 10. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 10.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.
- 10.3 The Expert shall act as an independent expert and:
- 10.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
  - 10.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
  - 10.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
  - 10.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
  - 10.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and
  - 10.3.6 the Expert shall use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.
- 10.4 Responsibility for the costs of referring a dispute to an Expert under this clause 10, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.
- 10.5 This clause 10 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.
- 10.6 The provisions of this clause 10 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

## **11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

## **12 INDEXATION**

12.1 The TRO Contribution payable to the Council shall be Index Linked.

12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Agreement) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

## **13 INTEREST**

If any sum due under this Agreement is paid late then Interest will be payable from the date payment is due until the date of payment.

## **14 WAIVER**

No failure or delay by the Council or County Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **15 TERMINATION**

15.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

15.1.1 expires;

15.1.2 is revoked other than at the request of the Owner; or

15.1.3 is quashed following a successful legal challenge.

## **16 FUTURE PERMISSIONS**

16.1 Subject to clause 15.2, nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

16.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission or any other planning permission granted under such powers (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 14.1.2 arise.

## **17 JURISDICTION**

17.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

17.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

IN WITNESS of which this Agreement has been duly executed as a deed and delivered on the date stated at the beginning of this Agreement.

EXECUTED as a DEED by affixing

THE COMMON SEAL of the COUNCIL OF THE

BOROUGH OF HAVANT

in the presence of:

\_\_\_\_\_  
Authorised Signatory

EXECUTED as a DEED by affixing

THE COMMON SEAL of

HAMPSHIRE COUNTY COUNCIL

in the presence of

\_\_\_\_\_  
Authorised Signatory

Name

Position

EXECUTED as a DEED by affixing the  
COMPANY SEAL of EI GROUP LIMITED

in the presence of two duly authorised signatories

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Authorised Signatory

EXECUTED as a DEED by  
Affixing the common seal of  
CO-OPERATIVE GROUP FOOD LIMITED  
in the presence of:

\_\_\_\_\_  
Authorised Signatory

C J Sellers  
Authorised Sealing Officer

CGFL63990



## **SCHEDULE**

### **OWNER'S AND DEVELOPER'S COVENANTS**

The Owner and the Developer covenant with the Council (in respect of paragraphs 1 and 2) and the County Council (in respect of paragraphs 1 and 3):

#### **1 COMMENCEMENT OF DEVELOPMENT**

To give to the Council and the County Council not less than ten Working Days written notice of their intention to Commence Development.

#### **2 TRO CONTRIBUTION**

Not to Occupy or permit Occupation of the Development until the TRO Contribution has been paid to the Council.

#### **3 HIGHWAY WORKS**

3.1 Not to Commence or permit Commencement of Development until a Highway Agreement (in a reasonable form) has been entered into with the County Council in respect of the Highway Works.

3.2 Not to Occupy or permit Occupation of the Development until the Highway Works have been completed in accordance with the Highway Agreementt and a Completion Certificate issued (such certificate not to be unreasonably withheld or delayed).

APPENDIX 1

PLAN

Drawing: 163094\_AP\_20



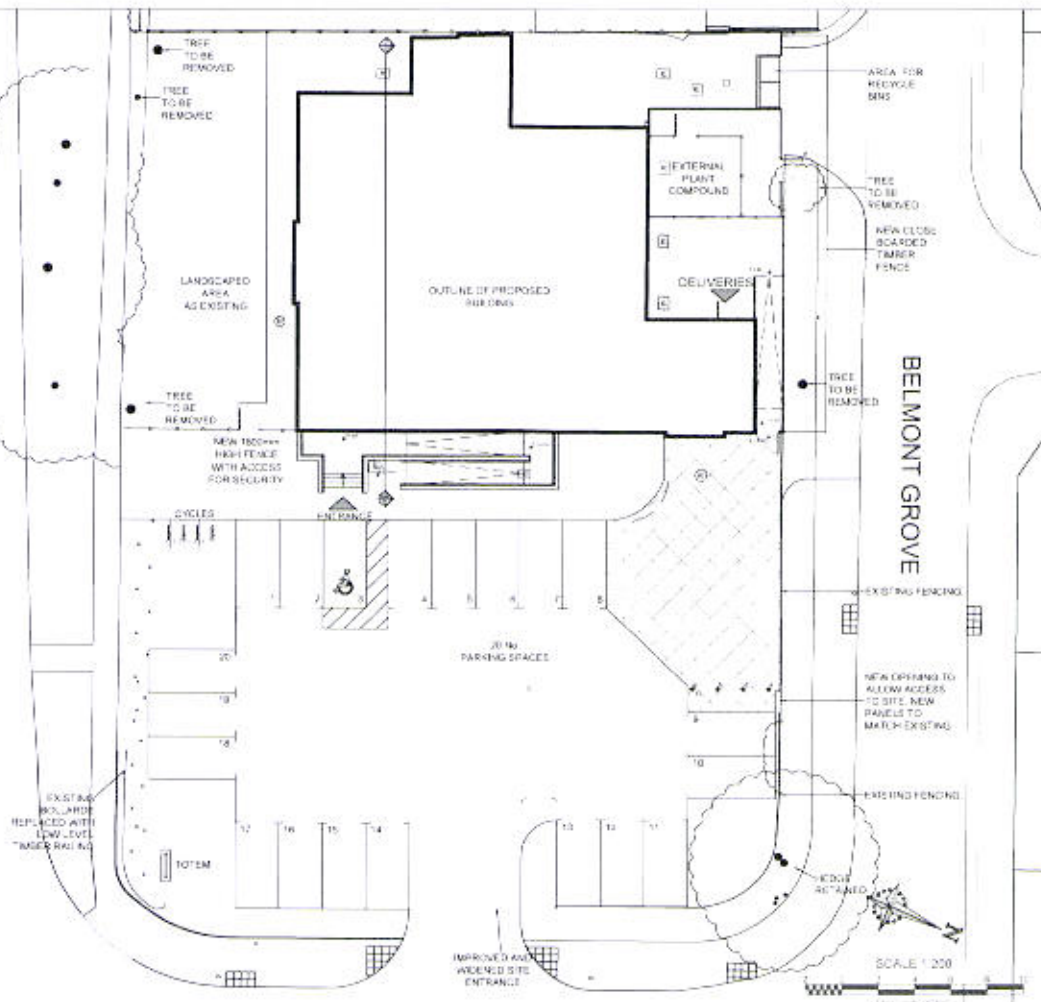
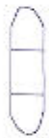
APPENDIX 2

HIGHWAY WORKS

Drawing Number SK02 and Drawing Number 30 Rev D

A3

BEDHAMPTON ROAD



**CONSENT B**  
 Details of the building and the layout of the site are shown on the plan. The plan is subject to the approval of the Council.

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**PLANNING ISSUE**  
 163094 AP 30