

THIS Agreement is made the _____ day of Two
thousand and Nine _____

Formatted

Formatted

Formatted

PARTIES

(1) COTSWOLD DISTRICT COUNCIL of Trinity Road Cirencester GL7 1PX
("the Council")

Formatted

Formatted

(2) COTAX LIMITED and WINSLETT PROPERTY LIMITED (TRADING AS
CYGNET INVESTMENTS) care of SWANGROVE ENTERPRISES
LIMITED of Little Parks, Woodlands Lane, Cobham, Surrey KT11 3QD("the
Owner")

(3) HSBC BANK PLC whose registered office is situate at Birmingham Securities
Processing Centre PO Box 8042 Birmingham B2 4NR ("the Bank")

Formatted

Formatted

1. Definitions and Interpretation

1.1 In this Planning Agreement the following expressions shall where the context
so requires or admits have the following meanings:

"Act" means the Town and Country Planning Act 1990 (as
amended by the Planning and Compensation Act
1991) or any re-enactment or modification thereof for
the time being in force

"Application" the application made by the Owner for the erection of
tourism accommodation comprising 95 pavilions

"Application Plan" the plan annexed hereto

"Application Site" Property known as Lake 103, 103A and 104
Cotswold Water Park Fairford Gloucestershire

"Development" such development as may be authorised by the

Planning Permission

“Implementation”

means in the case of implementation of the Planning Permission the carrying out of any material operations listed in Section 55 of the Act pursuant to the Planning Permission provided that for the purposes of determining whether or not a material operation has been carried out there should be disregarded site surveys and investigations and “implement” and “implemented” shall be construed accordingly

“Planning Permission”

the Planning Permission granted or to be pursuant to the Planning Application under reference number

Holiday Homes

any unit to be constructed on the Application Site pursuant to the Planning Permission solely for the purpose of residential occupation and notwithstanding Class C3 of the schedule to the Town and Country Planning (Use Classes) Order 1987 such units may be occupied by any person at any time for any purpose other than as holiday accommodation

2. Interpretation

For the purposes of this Agreement:

- 2.1 The singular includes the plural and vice versa
- 2.2 The masculine gender includes the feminine and neuter genders and vice versa

- 2.3 References to persons include firms, companies, corporations, authorities or other bodies and vice versa
- 2.4 References to Acts of Parliament, Statutory Instruments or Government Circulars or sections or paragraphs of such Acts, Statutory Instruments or Government Circulars include any re-enactments, amendments or replacement of them
- 2.5 The references to the parties named in this Agreement unless the context otherwise requires include their successors in title and assignees and in the case of any local authority shall also include any successor in function
- 2.6 The headings in this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement
- 2.7 Where in this Agreement any approval or consent or a certificate is required to be given by the Council such approval, consent or certificate shall unless otherwise stated be given by such officers as the Council shall from time to time notify in writing to the appropriate party as being the appropriate officer for such purpose
- 2.8 Where the consent, approval or agreement of any party hereto is required for any purpose under or in connection with the terms hereof it shall be made in writing and any such consent, approval or agreement shall not be unreasonably withheld or delayed
- 2.9 All payments in accordance with the terms of this Agreement shall be exclusive of any VAT payable in respect thereof

3. Recitals

- 3.1 The Council is a local planning authority as defined in the Act and for the purposes of Planning Obligations imposed pursuant to the provisions of Section 106 of the Act
- 3.2 The Owner is the owner in fee simple in possession of the Application Site
- 3.3 The Application has been submitted to the Council by the Owner for Planning Permission for the development of the Application Site as described in the Application.
- 3.4 The Council is willing to grant the Planning Permission pursuant to the Application subject to the parties entering into this Agreement to make provisions for and secure the matters set out below
- 3.5 The Bank consents to completion of this Agreement and acknowledges that as from the date hereof (subject as hereinafter appearing) Lakes 103, 103A and 104 shall be bound by the restrictions and obligations contained in this Agreement

4. Condition Precedent

- 4.1 This Agreement is conditional on and shall only have effect on the date on which the Owner shall begin the Development by Implementation of the Planning Permission

5. Statutory Provisions and Covenants

- 5.1 This Agreement is entered into pursuant to the provisions of Sections 106 of the Act and Section 111 of the Local Government Act 1972 and the relevant clauses herein shall be deemed to be planning obligations in respect of the land for the purposes of those sections but without prejudice to all and any other means of enforcing them at law or in equity or by statute and will be registered as a local land charge

5.2 The covenants and obligations created by this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council

5.3 This Agreement shall cease to have effect in respect of any then outstanding obligations in the event that Planning Permission is revoked

5.4 No person shall be liable for any breach of this Agreement unless they hold an interest in that part of the Application Site in respect of which such breach occurs or held such an interest at the date of the breach

6. Obligations

6.1 The Owner covenants with the Council:-

6.1.1 Not to allow to be constructed or construct on any part of the Application Site any Holiday Home other than on the land coloured green on the Plan

6.2 The Owner further covenants with the Council:-

6.2.1 That the Holiday Homes will not be occupied for two periods of two weeks between October and March in each calendar year the timing of such periods to receive prior written confirmation by the Council's Heritage and Design Manager ("HD Manager")

6.2.2 That if at any time the Holiday Home is let out by the Owner or sublet by a leaseholder the lease or sublease shall contain a covenant on the part of the leaseholder or sub-leaseholder to occupy the Holiday Home only as a Holiday Home

6.2.3 That if at any time the Owner shall dispose of its freehold interest in the land or any Holiday Home is sold on a long lease (over 21 years) the Owner will provide to the Council's Development Control Manager ("DC Manager") the full name and address of the purchaser lessee or person to whom the freehold

interest of the Holiday Home has been disposed within one month of the date of such lease or disposition.

6.2.4 That as from the date any Holiday Home is first occupied the Owner will at all times thereafter:-

6.2.4.1 Undertake an annual audit of all its lessees by the 30th day of November of every year to ascertain that such Holiday Homes are being occupied for holiday purposes only and shall within 14 days of completion of such audit forward to the DC Manager a copy of such audit

6.2.4.2 Report all breaches immediately to the Council and

6.2.4.3 Remedy the situation in the event that there are any detected breaches of the occupation restriction

6.2.5 Only use or permit the Holiday Homes to be used as Holiday Homes

6.2.6 Unless otherwise agreed in writing with the HD Manager not to implement the Development until the written approval of the HD Manager has been received to a landscape and ecological management plan such as landscape and ecological management plan to include the following

6.2.6.1 The long term aims and objection for the ecological and landscape creation mitigation management and monitoring

6.2.6.2 Details of ecological and landscape features retained

6.2.6.3 Details of how these features will be protected during construction

6.2.6.4 Details of structural planting and habitat

6.2.6.5 Details of long term management and monitoring for a period expiring ten years from the completion of the Holiday Homes comprised within the Development such completion to be confirmed in writing by the Council's

Heritage and Design Manager or such other person that may be agreed in writing between parties

6.2.6.6 Maintenance schedule including annual work programmes for the first ten years and

6.2.6.7 Submission of a report to the management and monitoring of the site to the Council annually

6.2.7 The approved management plan shall be implemented in full during the time scales laid out in the plan unless otherwise agreed in writing by the Council

7. Covenants by the Council

7.1 The council covenants with the Owners as follows:-

7.1.1 To grant the Planning Permission as soon as possible after the date of this Agreement

8. Notices

8.1 Any notice or consent required or permitted under this Agreement shall be in writing and shall be sent by first class registered post, hand delivery or fax. There shall be no right to serve notices or consents by email but if a party chooses to do so (and the other party agrees) email may be used.

8.2 Subject to Clause 8.4 below any such notice, consent or other document shall be deemed to have been duly received:-

8.2.1 if despatched by first class registered post - 48 hours from the time of posting to the relevant party; or

8.2.2 if despatched by hand delivery – at the time of actual delivery; or

8.2.3 if despatched by fax or email – 24 hours after the time of despatch

- 8.3 Unless otherwise notified by one party to the other in writing from time to time for the purposes of this clause the postal and email addresses and fax numbers for each party are set out herein
- 8.4 Proving service by post it will be sufficient (unless any relevant part of the postal service is affected by industrial action) to prove that the envelope containing the notice was duly stamped addressed and posted to the addresses specified in Clause 8.3 above. In proving service by fax or email it will be sufficient to prove that it was properly addressed and despatched to the numbers or addresses specified in Clause 8.3 above
- 8.5 A party shall not attempt to prevent or delay the service on it of a notice under this Deed

9. Non-Waiver

It is hereby agreed by the parties hereto that failure by the Council at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner or any of the conditions, covenants, agreements or obligations of this Agreement or any failure or delay by the Council to exercise any right or remedy shall be construed as a waiver of or as creating an estoppel in connection with such condition, covenant, agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision in any variation of the Agreement agreed between the Owner and the Council shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendment or amendments agreed

10. Arbitration

- 10.1 Any party to any dispute or difference may apply for the appointment of an umpire in accordance with this clause whenever it thinks fit after such a dispute or difference shall have arisen
- 10.2 Any dispute in respect of the interpretation of this Agreement or the wording of any document required to be entered into between the parties and the provision of this Agreement shall be referred to the determination by a solicitor (of not less than ten years standing) experienced in the relevant matter to be agreed between the parties or in default nominated on the application of any party by the President (or other available officer able to make such appointment) of the Law Society
- 10.3 Any other dispute shall be referred to an appropriate member of the Institute of Arbitrators (of not less than ten years standing) experienced in the relevant matter to be agreed between the parties or in default nominated on the application of any party by the President (or other available officer able to make such appointment) of the Institute of Arbitrators
- 10.4 The umpire so agreed or nominated shall give notice of this appointment to the parties not later than seven days after its appointment
- 10.5 Any determination shall be made by the relevant umpire acting as an expert who shall assume (whether or not such shall be the case) that the parties wish to determine such dispute or differences as quickly as possible and who shall:-
 - 10.5.1 Require the submission to him and the other party or parties of any representations within 10 days of notice of his appointment
 - 10.5.2 Require the submission to him and the other party or parties of any counter representations within 5 days of the submission of the original representation

10.5.3 (Subject to the payment of his fees which shall initially be paid on demand by the parties in equal shares) issues his decision within 21 days of notice of his appointment

10.5.4 Decide how the cost of such determination are to be borne

10.6 All references in this clause to parties are references only to the parties to the dispute or difference

11. Miscellaneous

11.1 If any party defaults in the payment when due of any sum payable under this Agreement (whether pursuant to a Court Order or otherwise) the liability of that party in default shall be increased to include interest on such sum from the date when such payment was due until the date of actual payment at the rate of 4% above the base rate from time to time of Lloyds Bank plc such interest shall accrue from day to day and shall be compounded annually

11.2 The Owner shall pay to the Council upon completion of this Agreement its proper and reasonable legal costs incurred in connection with this Agreement

11.3 The Owner hereby consents to the registration of this deed as a local land charge

11.4 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

11.5 This Agreement constitutes a deed

10. Third Parties

Nothing in this Agreement shall give any third party (not being a party to this Agreement) any right to enforce any of the obligations, rights or covenants on

the part of the Owner or the Council under this Agreement whether in accordance with the Contract (Rights of Third Parties) Act 1999 or otherwise

EXECUTED as a Deed by the said

COTAX LIMITED

Acting by:

Director

Director/Secretary

EXECUTED as a Deed by the said

WINSLETT PROPERTY LIMITED

Acting by:

Director

Director/Secretary

EXECUTED as a Deed by the said

HSBC BANK PLC

Acting by:

Director

Director/Secretary

DATED

2009

COTSWOLD DISTRICT COUNCIL (1)

and

COTAX LIMITED and WINSLETT PROPERTY LIMITED (TRADING AS
CYGNET INVESTMENTS) (2)

and

HSBC BANK PLC (3)

PLANNING OBLIGATION

(By Agreement)

relating to land at Lakes 103, 103A and 104
Cotswold Water Park Fairford
Gloucestershire

Colemans-ctts Solicitors
1/3 Union Street
Kingston upon Thames
Surrey KT1 1RP