

HERTSMERE BOROUGH COUNCIL (1) (“the Council”)

and

HERTFORDSHIRE COUNTY COUNCIL (2) (“the County Council”)

and

ROBERT BRIAN PRINCE and SUSAN RITA PRINCE (3) (“the First Owner”)

and

JOHN ANTHONY MURPHY (4) (the “Second Owner”)

and

BEEHCROFT DEVELOPMENTS LIMITED (5) (“the Developer”)

and

BARCLAYS BANK PLC (6) (the “First Mortgagee”)

and

BANK OF SCOTLAND PLC (7) (the “Second Mortgagee”)

Planning Obligation by Deed of Agreement under Section 106 of
the Town and Country Planning Act 1990 (as amended)
Relating to land at 49, Longview, and land to the rear, London
Road, Shenley, Hertfordshire.

Appeal Reference: APP/N1920/W/25/3365681
Planning Application reference: 23/1795/OUT

**~~Relating to land at 49, Longview, and land to the rear, London
Road, Shenley, Hertfordshire~~**

~~Appeal Reference: APP/N1920/W/25/3365681~~

Parties

1. **HERTSMERE BOROUGH COUNCIL** of Civic Offices, Elstree Way, Borehamwood, WD6 1WA (the “**Council**”)
2. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall, Pegs Lane, Hertford, Hertfordshire (the “**County Council**”)
3. **ROBERT BRIAN PRINCE and SUSAN RITA PRINCE** of Longview, 43a London Road, Shenley, Radlett, Hertfordshire WD7 9BN (together known as the “**First Owner**”)
4. **JOHN ANTHONY MURPHY** of The White Lodge, 49 London Road, Shenley, Hertfordshire WD7 9BN (the “**Second Owner**”)
5. **BEEHCROFT DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company registration number 01798684 whose registered office is at 1 Church Lane, Wallingford, Oxfordshire OX10 1DX (the “**Developer**”)
6. **BARCLAYS BANK UK PLC** (company registration number 9740322) of P.O. Box 187, Leeds LS11 1ANM (the “**First Mortgagee**”)
7. **BANK OF SCOTLAND PLC** (Scottish company registration number SC327000) of Intelligent Finance Division, P.O. Box 17316 Edinburgh EH12 1AY (the “**Second Mortgagee**”)

together referred to as the “**Parties**” and individually referred to as “party” in this Deed.

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Application Site is situated.
- (B) The County Council is the local highway authority (except for trunk roads for the area in which the Application Site is situated) and is also a local planning authority for the purposes of the TCPA 1990 in which the Application Site is situated.
- (C) The First Owner is the freehold owner of that part of the Application Site which is registered at Land Registry under Title Number HD274753 and which is subject to a registered charge dated 9 October 2009 in favour of the First Mortgagee.

- (D) The Second Owner is the freehold owner of that part of the Application which is registered at Land Registry under Title Number HD157751 and which is subject to a registered charge dated 30 June 2006 in favour of the Second Mortgagee.
- (E) The Developer has entered into contracts dated 17 August 2022 with the First Owner and the Second Owner to purchase the Application Site.
- (F) The Developer submitted the Planning Application to the Council.
- (G) The Council refused the Planning Application on the 19 November 2024.
- (H) The Developer has submitted the Appeal against the Council's refusal to the Secretary of State and the ~~P~~parties have agreed to enter into this Deed in order to secure the planning obligations included within this Deed subject to the Appeal being allowed by the Secretary of State.
- (I) The Council, the County Council, the Owner and the Developer (subject to the Appeal being allowed by the Secretary of State) agree that the obligations contained within this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development, are fairly and reasonably related in scale and kind to the Development and satisfy the tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).

1. INTERPRETATION

1.1 Definitions

The following definitions and rules of interpretation apply in this Deed

Affordable Housing means housing to be made available to persons regarded by the Council as in Housing Need whose incomes are insufficient to enable them to rent or buy housing available locally on the open market;

Affordable Housing Scheme means the scheme to be submitted to the Council which shall, ~~subject to~~require written approval by the Council ~~before Development Commences~~, set out the final details of tenure, location and size of the Affordable Housing Units to be provided at the Development and the programme and timetable for their provision;

Commented [KA1]: Approval of where the units are to be located including all details are required before development commences.

Affordable Housing Units

means that part of the Development comprising at least 50% of the Dwellings (totalling 51 units) for use as Affordable Housing delivered in accordance with the approved Affordable Housing Scheme and Agreed Mix and built to an external standard which is no less than that of the Market Housing Units (subject always to the Planning Permission) and to an internal standard approved by the acquiring Registered Provider;

Commented [KA2]: Need to check this with the planning officer.

Affordable Rented Housing Units

means the Affordable Housing Units to be occupied as Affordable Rented Housing as identified on the Affordable Housing Land Plan Scheme (and in the locations to be agreed with the Council) and let to households who are eligible for social rented housing the rent of which is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) and the rent shall not exceed the Council's local housing allowance;

Commented [NG3]: Affordable Housing Land Plan is not defined and location is part of the AH Scheme

Affordable Rented Housing

means Affordable Housing let by a local authority or private registered provider of social housing to households who are eligible for social rented housing where the rent level is capped at 80% of the local market rent (including any service charges, where applicable);

Agreed Mix

means of a mix of fifteen (15) Affordable Rented Housing Units and thirty six (36) Discounted Market Units Housing (or such other mix of tenures approved in writing by the Council

Commented [KA4]: Seeking instructions whether these type of units are acceptable to the Council.

Appeal

means the appeal by the Developer to the Secretary of State against the decision by the Council to refuse the Planning Application under section 78 of the Town and Country Planning Act 1990 and which has been assigned appeal reference APP/N1920/W/25/3365681

Appeal Decision

means the appeal decision made by the Planning Inspectorate to be made following the Inquiry in respect of the Appeal;

Application Site	means the land shown edged red on Plan 1 and known <u>as</u> 49 Longview and land rear of London Road, Shenley, Hertfordshire which registered at HM Land Registry under Title Numbers HD274753 and HD157751 and for the purposes of this Deed only excludes any land forming part of the public highway;
Base Rate	means the base rate from time to time of <u>the Bank of England</u> NatWest Bank ;
Biodiversity Baseline Position	means the extent of the biodiversity features that exist on the Application Site calculated in accordance with the Biodiversity Metric as at the date of the Planning Application <u>and</u> submitted as part of the Planning Application <u>to the Council</u>
Biodiversity Enhancements	means the habitat creation and enhancement works to be carried out on the <u>Application</u> Site calculated in accordance with the Biodiversity Metric and set out in the Biodiversity Gain Plan and the Habitat Management and Monitoring Plan to secure an increase in Biodiversity Units on-site (excluding any management or monitoring activities specified in the <u>Habitat Management and Monitoring Plan</u> HMMP)
Biodiversity Gain Plan	means the plan to be submitted for approval by the Council to satisfy the requirement to provide a minimum of 10% gain in Biodiversity Units above the Biodiversity Baseline Position and <u>meet</u> the requirements pursuant to <u>set out in</u> paragraph 13 and 14 of Schedule 7A of the TCPA 1990 <u>(and subject to any conditions in the Planning Permission related to the biodiversity requirements by the Owner)</u>
Biodiversity Metric	means the statutory biodiversity metric published by the Department for Environment, Food & Rural Affairs <u>or Natural England</u> published from time to time <u>that can be used to measure the biodiversity value or relative biodiversity value of habitat or habitat enhancement for the purposes of biodiversity net gain.</u>
Biodiversity Net Gain Monitoring Fee	means the sum of £531 (Five Hundred and Thirty One Pounds) (Index Linked)

Commented [NG5]: One of the landowners has queried why this is not BoE base rate.

Commented [KA6]: This figure is incorrect and needs to be calculated to cover the monitoring over the 30 year period. The instructing officer is confirming the figure to me and I will relay to you in due course.

Biodiversity Units

means the quantum of biodiversity to be secured for the Development either on-site and/or off-site as measured by the Biodiversity Metric;

Cascade

means securing the allocation of the required number and type of Biodiversity Units calculated in accordance with the Biodiversity Metric on sites in the following order of priority:

- (a) in the first instance within the Borough of Hertsmere (with preference given to the allocation of Biodiversity Units on land which is close to the Site);
- (b) in the second instance within the County of Hertfordshire;
- (c) in the third instance within the neighbouring Counties of Buckinghamshire, Bedfordshire, Essex, Cambridgeshire or Greater London;
- (d) in the fourth instance within the south-east of England; and
- (e) in the fifth instance else where in England

Charge Holder

means any mortgagee or chargee of the Application Site (or any part thereof) from time to time or the successors in title to such mortgagee or chargee or any receiver (including an administrative receiver) or manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator

CIL

Community Infrastructure Levy introduced under Part 11 of the Planning Act 2008 and brought into effect by the Community Infrastructure Levy Regulations 2010 (as amended);

Commencement of Development

means the carrying out on the Application Site in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed, and for no other purpose, the following operations:

- (i) demolition works;
- (ii) site clearance;
- (iii) site preparation
- (iv) ground investigations;
- (v) investigation for the purposes of assessing contamination
- (vi) remedial action in respect of contamination
- (vii) diversion and laying out of services site survey works;
- (viii) temporary access construction works
- (ix) archaeological investigation; and
- (x) erection of any fences and hoardings around the Application Site;

Commenced and **Commence(s)** shall be construed accordingly;

Commencement Date

means the date of Commencement of Development;

Commented [KA7]: Seeking comments from the planning officer on whether this can be agreed.

**County Council
Monitoring Fee**

means the sum of four hundred and twenty pounds (£420.00) (Index Linked) towards the Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed

Commented [SD8]: As per:
<https://www.hertfordshire.gov.uk/media-library/documents/environment-and-planning/planning/guide-to-developer-infrastructure-contributions.pdf>

Commented [NG9R9]: Please can County confirm

CPI

means the Consumer Price Index being a price index calculated and published by the UK's Office of National Statistics which measures the change in the prices charged for goods and services bought for consumption in the UK or such other index which replaces it

Default Interest Rate

means 4% per annum above the Base Rate;

Development

means the demolition of Longview and associated outbuildings, alterations to no.49 London Road along with the erection of replacement garage following demolition of the existing garage to allow for the construction of up to 103 no. retirement homes (Use Class C3) , an integrated community facility, vehicular and pedestrian access, internal roads, landscaping, drainage and other associated works and infrastructure (hybrid application with full details of works at no.49 London Road with the remainder being outline with all matters of detail reserved except for access) on the Application Site pursuant to the Planning Permission should this be authorised by the Appeal Decision;

**Discount Market
Dwelling**

means housing sold at a Discount Market Price to and occupied by Eligible Households

Commented [KA10]: I have asked for details of the type of affordable housing required in the agreement.

Discount Market Price means a sum which is the not more than 80% of the market value of the Discount Market Dwelling as at the date of any proposed sale as determined by an independent written assessment from a chartered surveyor of not less than 10 years standing having experience of residential property within the local area to the Development

Discount Restriction means a restriction registered on the title of each Discount Market Dwelling on the sale of each Discount Market Dwelling at a Discount Market Price in the following form:

No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer for the disponor or disponent that the provisions of [paragraph] of the Affordable Housing Schedule 1 to the Section 106 Agreement dated [] and made between [] Borough Council and [] have been complied with'

Dwelling means a residential unit forming part of the Development to be constructed on the Application Site pursuant to the Planning Permission and "Dwellings" shall be construed accordingly;

Eligible Household means a person or persons in need of accommodation who are unable to rent or buy on the local open market as nominated by the Council in accordance with Part 2 of this Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council

[Healthcare Contribution means the sum of £133,096 (one hundred and thirty three thousand and ninety six pounds) Index Linked to be applied by the Integrated Care Board or subsequent successor body solely towards the Healthcare Contribution Purposes;]

[Healthcare Contribution Purposes **ADD PURPOSE/USE OF CONTRIBUTION** :]

Commented [KA11]: Checking for confirmation whether this figure is agreed.

Commented [KA12]: Seeking comments on this for the detail to be added.

HMMP

the Habitat Management and Monitoring Plan to be submitted to and approved by the Council in writing in accordance with Paragraph ~~[xx]~~1 of Schedule ~~[xx]~~2 of this Deed and which shall include as a minimum:

- (a) a non-technical summary;
 - (b) the roles and responsibilities of the people or organisation(s) delivering the HMMP;
 - (c) the planning habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;
 - (d) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of at least 30 years from the completion of the Development;
- the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the Council

Household

means any person or persons who could be reasonably expected to live as an independent domestic unit and "Households" shall be construed accordingly;

Housing Need

- a) Households who are in need of residential accommodation as their sole or principal home who for the time being are registered on the Council's maintained housing register and/or other housing register approved by the Council maintained for the purpose of identifying Local Housing Need in accordance with the policy of the Council and agreed by the Council in writing; or
- a)b) in the event that there shall be no such persons ready willing and able to occupy an Affordable Housing Unit at the material time then a Household who is assessed by a Registered Provider or the Council to be in genuine and urgent housing need and agreed by the Council in writing;

Homes England means the body that funds and regulates Registered Providers (including successors to the functions and powers of Homes England;

Commented [SD13]: Definition not used

Index Linked

such increase only to any sum or sums payable under this Deed on an ~~annual or~~ pro rata per diem in accordance with clause 8 of this Deed;

Inspector

means the inspector appointed by the Secretary of State to determine the Appeal;

Integrated Care Board

means the statutory body that has the function of commissioning services for the purpose of the health service in England and is treated as an NHS body for the purposes of the National Health Service Act 2006 or its successor to its statutory functions or such other statutory body who may replace the NHS Hertfordshire and West Essex Integrated Care Board of Charter House, Parkway, Welwyn Garden City, Hertfordshire AL8 6JL;

Local Connection Criteria

means either:

(i) ~~they live in the Borough and have had residence in the Borough for the last two years; or~~

(ii) ~~their place of paid employment is in the Borough and they have been employed for more than 16 hours per week for the last two years; or~~

(iii) ~~they have close family, defined as parents/legal guardians, siblings and or adult children, who have lived in the Borough as their main place of residence for the last consecutive five years; or~~

(iv) ~~where they provide documentary evidence to show that they have special circumstances through which a local connection has been established with the Borough (and which is acceptable to the Borough Council (acting reasonably));~~

Commented [SD14]: Definition not used - no intention to provide Shared Ownership

Commented [KA15R15]: I need to check if this agreed and will come back when I have instructions on this.

Market Housing Units means any residential unit forming part of the Development which is general market housing for sale on the open market and which is not an Affordable Housing Unit;

Market Value means the price which the whole interest in the relevant [Discount Market Dwelling](#) would be reasonably expected to command if sold on the open market by a willing vendor to a willing purchaser for residential purposes subject to the terms of this Agreement but free of the restrictions in the First Schedule to this Agreement the open market value as assessed by a Valuer of a Market Dwelling as confirmed to the District Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standard (January 2014 or any replacement guidance);

Commented [NG16]: We have amended to refer to Discount Market Dwellings only as there is not an intention to provide First Homes

Monitoring Fee means the sum of £[xxxxx] (Index Linked) towards the Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed

Commented [NG17]: Please confirm amount

Commented [KA18R18]: Have requested the details on this.

Mortgagee means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire [Unit a Discount Market Dwelling](#) (including Sharia-compliant finance);

Nominations Agreement means the agreement in the form ~~set out at Annex E to be agreed and made~~ between the Council (1), and the Registered Provider (2) setting out the selection and prioritisation of tenants and occupiers of the Shared Ownership Housing units, the Affordable Rented Housing Units and the Social Rented Housing Units (or in such other form as is agreed between the Council and the Registered Provider acting reasonably);

NPPF	means the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government in December 2024 or any successor document thereto;
Occupation	means the physical use of land or buildings for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction or fitting out, or occupation for marketing or display, or occupation in relations to security operations and Occupy, Occupied, Occupation and Occupiers shall be construed accordingly;
Owner	means the First Owner and the Second Owner and unless otherwise expressly stated and the term “Owner” shall include any successor in title to each of the above owners’ respective interests in the Application Site;
Plan 1	means the plan attached as ANNEX A and marked “Plan 1” showing the Application Site edged red;
Plan 2	means the plan attached as ANNEX B and marked “Plan 2” showing Owner ownership;
Planning Application	the application for outline planning permission <u>submitted by the Developer on 22 December 2023 to the Council and</u> validated by the Council on 8 January 2024 —under reference number 23/1795/OUT for Planning Permission for the Development;
Planning Permission	means the planning permission for the Development if it is granted by the Inspector on <u>the Appeal being allowed</u> in respect of the Planning Application and the Appeal;

Practical Completion:	<u>Means</u> the issue of a certificate of practical completion by the Owner's architect certifying the practical completion (as defined in the JCT Major Project Construction Contract (or in the absence thereof such other industry standard definition of practical completion as notified by the Council <u>to the Owner</u> , acting reasonably) of the Affordable Housing Units <u>or a certificate of practical completion can be provided by the NHBC (or other approved inspector by the Council) or the Council's Building Control Department as the Council requires for the Affordable Housing Units;</u>
Protected Tenant	means any tenant who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or (c) has staircased up to 100% ownership of any Shared Ownership Housing
Registered Provider	means any company organisation whose aim or function includes the provision and management of Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) which is <u>a registered or eligible for registration provider under Chapter 3 of Part 2 of within the meaning of</u> the Housing and Regeneration Act 2008 (or such other relevant previous or amended or replacement statutory provision) and which is approved <u>in writing</u> by the District Council (acting reasonably) <u>in advance of any negotiations taking place between the Owner and the registered provider for the Affordable Housing Unit;</u>
Reserved Matters	means as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015;

Secretary of State	means the Secretary of State for Housing, Communities and Local Government from time to time appointed and any successor in function;
Shared Ownership Housing	means housing provided pursuant to the Affordable Housing Plan Scheme by a Registered Provider where the occupier is initially offered a twenty-five to seventy-five per cent (25-75%) share in the property (with the option of purchasing a greater share either at that time or subsequently should the occupier so wish) and pays a maximum rent of 2.75% per annum on the value of the unsold equity
Social Rented Housing	means <u>housing provided pursuant to the Affordable Housing Plan by a Registered Provider at guideline target rents which are determined through the rent standard set by the Regulator of Social Housing (or its successor in function)</u> Affordable Housing let to eligible households for which guideline target rents are determined through the national rent regime;
<u>Sustainable Travel Voucher</u>	means [xxx]
TCPA 1990	means the Town and Country Planning Act 1990 (as amended);
<u>Travel Pack</u>	means [xxx]
Travel Plan	means the travel plan to be submitted and approved by the County Council pursuant to paragraph [xx] of Schedule 4 to this Deed;
Travel Plan Annual Review	means an annual data collection study reviewing and monitoring the provisions of the Travel Plan (as more fully set out therein) such annual study to be carried out from 1 year of the anniversary of the baseline survey and then annually in the corresponding calendar month for a period of 5 years;

Commented [SD19]: County Council to confirm definition

Commented [SD20]: County Council to confirm definition

Travel Plan Baseline Survey Collection Date	means the date on which baseline surveys are collected pursuant to paragraph [xx] of Schedule 4 to this Deed;
Travel Plan Co-ordinator	means a person appointed by the Owner and approved by the County Council who shall be responsible for managing on behalf of the Owner the implementation monitoring progression reporting and review of the Travel Plan and the day-to-day management of the steps identified in the Travel Plan in order to achieve its objectives and targets;
Travel Plan Monitoring Fee	means the sum of £6,000 (£6,000) (Index Linked) payable to the County Council in five annual instalments as a contribution towards the County Council's administrative costs for monitoring the Travel Plan;
Travel Plan Guidance	means the County Council's document entitled 'Travel Plan Guidance' which can be found at https://www.hertfordshire.gov.uk/media-library/documents/highways/development-management/travel-plan-guidance.pdf or such version current as at the date of submission of the Travel Plan;
Travel Plan Remedial Measures Notice	means a notice in writing served on the Owners via the Travel Plan Co-ordinator by the County Council where the Owners has failed to meet one or more of the targets identified in the Travel Plan specifying the remedial measures and/or actions required to be taken by the Owners to remedy the failed implementation towards the agreed targets with a reasonable time provision;
VAT	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax;
Working Day	means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1.2 Clause headings shall not affect the interpretation of this Deed.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council and County Council the successors to their respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and email
- 1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the term(s) **including, include, in particular, for** example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one ~~party~~**person**, the obligation can be enforced against every ~~person~~**party** so bound jointly and against each of them individually.

2. **STATUTORY PROVISIONS**

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by that person in the Application Site and in all cases their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this Deed are enforceable by the Council and (where applicable) the County Council in accordance with section 106 of the TCPA 1990.
- 2.4 Nothing in this Deed shall fetter the discretion of the Council to make decisions in the future and/ or in any other capacity (including but not limited to the ability to make decisions at the Reserved Matters stage in accordance with relevant planning policy).

3. **CONDITIONALITY**

With the exception of clauses 3, 4.1, [xxxx] (which take effect immediately), this Deed is conditional on the Appeal being allowed and subject to any detail in the decision notice issued by the Inspector-:

- 3.1 the grant and issue of the Planning Permission; and
- 3.2 the Commencement of Development

4. **OWNER'S COVENANTS TO THE COUNCIL AND THE COUNTY COUNCIL**

- 4.1 The Owner covenants with the Council and the County Council so as to bind the Application Site and each and every part thereof :
 - 4.1.1 to observe and perform the covenants, restrictions and obligations contained in Schedules 1 and 2 to 4 ;
 - 4.1.2 to give the Council and the County Council no less than five (5) Working Days prior written notice of the Commencement Date using the proforma set out in Schedule 6;
 - 4.1.3 to give the Council and the County Council no less than five (5) Working Days prior written notice of the first Occupation of the Development using the proforma set out in Schedule 6

4.1.4 to give the Council and the County Council no less than five (5) Working Days prior written notice of fifty (50) per cent Occupation of the Development using the proforma set out in Schedule 6-; and

4.1.5 to give the Council and the County Council no less than 5 Working Days prior written notice of seventy-five (75) per cent Occupation of the Development using the proforma set out in Schedule 6; and-

4.1.6 to give the Council and the County Council no less than five (5) Workings Days written notice of the date of completion of the Development using the proforma set out in Schedule 6.

4.1.5

4.2 The Owner further covenants with the Council and the County Council :

4.2.1 To pay the Council's and the County Council's reasonable and properly incurred legal costs incurred in connection with the preparation negotiation and completion of this Deed to the Council and the County Council upon completion of this Deed;

4.2.2 To pay the Monitoring Fee to the Council prior to Commencement of Development and not to Commence nor cause nor permit Commencement of Development until the Monitoring Fee has been paid to the Council;

4.2.3 To pay the County Council Monitoring Fee to the County Council prior to the Commencement of Development and not to cause nor permit Commencement of Development until the County Council Monitoring Fee has been paid to the County Council

4.3 The First Owner and the Second Owner further covenant that:-

(i) each is the freehold owner of its respective part of the Site;

(ii) its part of Site is free from all encumbrances material to this Deed;

(iii) no other party has an interest in its part of the Site save as provided for in the recitals to this Deed.

4.2.3

5. COVENANTS BY THE COUNCIL

5.1 The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations on its part set out in Schedule 3.

6. **COVENANTS BY THE COUNTY COUNCIL**

- 6.1 The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 3.

7. **EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS BY THE COUNTY COUNCIL**

- 7.1 If prior to the receipt of the Travel Plan Monitoring Contribution the County Council incurs any expenditure in monitoring the Travel Plan the need for which arises from or in anticipation of the Development then the County Council may immediately following receipt of the Travel Plan Monitoring Contribution apply such expenditure incurred

8. **INDEXATION**

- 8.1 All financial contributions payable to the Council and/ or the County Council will be Index Linked as follows:

8.1.1 The Monitoring Fee Index Linked by reference to the CPI Index from the 1 December 2014 to the date of payment; and

8.1.18.1.2 the County Council Monitoring Fee shall be ~~i~~Index ~~L~~linked by reference to the ~~RPI-CPI Index~~ figure from the date of this Deed until the date of payment

8.1.28.1.3 The Healthcare Contribution shall be index linked by reference the RPI Index figure from the date of this Deed until the date of payment

8.1.38.1.4 The Travel Plan Monitoring Contribution shall be index linked reference to the RPI Index figure of May 2014 to the finalised figure applicable to the month in which the Travel Plan Monitoring Contribution is paid

- 8.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased, then it includes 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 Deed) or, in the event the index is not replaced, to an alternative reasonably comparable basis or index as the ~~District~~ Council shall advise the Owner in writing.

9. **RELEASE AND ENFORCEABILITY**

- ~~9.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Application Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest. No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the~~

~~Application Site (except in respect of any breach subsisting before parting with that interest)~~

9.29.1 The obligations in this Deed shall not be enforceable against:

Commented [SD21]: Double check references

9.2.19.1.1 The individual owners or lessees of Dwellings within the Development or their chargees, mortgagees or successors in title save for the provisions of Schedule 2 and paragraphs 1.5, 1.6 and 1.74 and 1.5 to Schedule 1 ~~the latter of~~ which shall be enforceable against the owners and occupiers of the relevant Affordable Housing Unit(s) or (subject to paragraph (c) below) their chargees, mortgagees or successors in title subject to the releases set out at paragraph 1.98 of Schedule 1;

9.2.29.1.2 Any statutory undertaker (within the meaning of section 262 of the TCPA 1990) who acquires an interest in the Application Site solely by virtue of having plant or apparatus situated therein; or

9.39.2 Subject to the provisions of Schedule 1 of this Deed in so far as they relate to any mortgagee or chargee or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee of the Affordable Housing Dwellings only-, the obligations in this Deed shall not be enforceable against any Charge Holder unless and until such Charge Holder takes possession of the Application Site (-of any part of it to which such obligation under this Deed relates to) in which case it shall be liable as if it were a successor in title to the relevant owner in relation to the Application Site (or ~~the any~~ relevant part of ~~it the Application Site~~) and for the avoidance of doubt the Charge Holder shall acknowledge that this Deed shall bind the Application Site and their interest (and any successor in title) in that part of the Application Site.

10. DETERMINATION OF DEED

The obligations in this Deed (with the exception of clause 4.2-) shall cease to have effect if the Appeal is dismissed or if before the Commencement of Development, the Planning Permission:

- 10.1 expires;
- 10.2 is varied or revoked other than at the Owner's request; or
- 10.3 is quashed following a successful legal challenge.

11. LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the Council.

12. INTEREST ON LATE PAYMENT

- 12.1 If any sum or amount has not been paid to the Council or County Council by the date it is due under this Deed, the Owner shall pay the Council and/ or the County Council interest on that amount at the Default Interest Rate (both before and after any judgment). This interest will accrue on a daily basis for the period from the due date to and including the date of payment of the full amount due under this Deed.

13. OWNERSHIP

- 13.1 The Owner warrants and confirms that at the date ~~appearing above~~ of this Deed that no person other than the Owner has any legal or equitable interest in the Application Site save as already disclosed in writing to the Council and the County Council prior to completion of this Deed and as stated in the recital (C), (D) and (E) above.

- 13.2 Until the covenants, restrictions and obligations in ~~this Deed~~ Schedules hereto have been complied with, the Owner will give to the Council within ~~10~~ 5 Working Days the following details in writing of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Application Site:

13.2.1 the name and address of the person to whom the disposition was made; and

13.2.2 the nature and extent of the interest disposed of in the Application Site.

~~PROVIDED THAT this clause shall not apply to the disposal of individual completed Dwellings within the Development~~

14. DEVELOPER'S, FIRST MORTGAGEE' AND SECOND MORTGAGEES' CONSENTS

- 14.1 The First Mortgagee acknowledges and declares that this Deed has been entered into by the First Owner with its consent and that the First Mortgagee's interest in the Application Site shall be bound by the obligations contained in this Deed and that the security of its registered charge over the Application Site shall take effect subject to this Deed PROVIDED THAT the First Mortgagee shall have no liability under this Deed unless it takes possession of the First Owner's part of the Application Site, in which case it too will be bound by the obligations contained in this Deed as if it were a person deriving title from the First Owner.

- 14.2 The Second Mortgagee acknowledges and declares that this Deed has been entered into by the Second Owner with its consent and that the Second Mortgagee's interest in the Application Site shall be bound by the obligations contained in this Deed and that the security of its registered charge over the Application Site shall take effect subject to this Deed PROVIDED THAT the Second Mortgagee shall have no liability

under this Deed unless it takes possession of the Second Owner's part of the Application Site, in which case it too will be bound by the obligations contained in this Deed as if it were a person deriving title from the Second Owner

- 14.3 The Developer acknowledges and declares that this Deed has been entered into by the First Owner and the Second Owner with its consent PROVIDED THAT the Developer shall have no liability under this Deed unless it acquires the freeholdan interest in the Application Site, in which case it too will be bound by the obligations as if it were a person deriving title from the First Owner and the Second Owner.

15. **REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council or the County Council under this Deed shall not be unreasonably withheld or delayed **PROVIDED THAT** where any request for consent is not (in the reasonable opinion of the Council or the County Council) compliant with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and/ or applicable planning policy it shall not be unreasonable for consent to be withheld.

16. **CANCELLATION OF ENTRIES**

- 16.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs), the Council shall issue a written confirmation of that performance or discharge.
- 16.2 Following the performance and full satisfaction of all the terms of this agreement-Deed or if this Deed is determined pursuant to **clause 10** the Council shall on the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

17. **DISPUTES**

Any dispute, controversy or claim arising out of or relating to this Deed, including any question regarding its breach, existence, validity or termination of the legal relationships established by this Deed, shall be first be escalated to a senior authorised person for each party to this Deed and if the matter cannot be resolved within a reasonable time finally-then it will be resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed in this Deed that:

- 17.1 the tribunal will consist of one arbitrator appointed jointly by the Pparties;

17.2 in default of the Parties' agreement on the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;

17.3 the costs of the arbitration shall be payable by the Parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and

17.4 the seat of the arbitration shall be London.

17.5 The arbitrator will be required to give notice to each of the Parties, inviting each of them to submit to their written representations and cross representations with such supporting evidence as they shall consider necessary and the arbitrator shall have regard thereto in making their decision.

17.6 The arbitrator's decision will be given in writing as expediently as possible with reasons and in the absence of manifest error will be final and binding on the Parties.

17.4

18. **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed fetters or restricts the Council's or County Council's statutory rights, powers, discretions and responsibilities.

19. **WAIVER**

No failure or delay by the Council or County Council to exercise any right or remedy provided under this Deed or by law constitutes a waiver of that or any other right or remedy. No single or partial exercise of that right or remedy prevents or restricts the further exercise of that or any other right or remedy.

20. **FUTURE PERMISSIONS**

Nothing in this Deed prohibits or limits the right to develop any part of the Application Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission (if granted on Appeal).

21. **SECTION 73**

In the event that any new planning permission is granted by the Council (or granted on appeal) pursuant to a Section 73 [or Section 73B](#) of the TCPA 1990 then:

- 21.1.1 the obligations in this Deed shall also relate to and bind any subsequent planning permission in respect of the Application Site granted pursuant to Section 73 [or Section 73B](#) of the TCPA 1990; and
- 21.1.2 the definitions of Development, Planning Application and Planning Permission in this Deed shall be construed to include reference to any application under Section 73 [or Section 73B](#) of the TCPA 1990^t, the planning permission granted thereunder and the development permitted by such subsequent planning permission(s)

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any applications under section 73 [or Section 73B](#) of the TCPA 1990 and in the event that upon receipt of an application under section 73 [or Section 73B](#) of the TCPA 1990 the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and declared that the Council retain the right to refuse any such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.

22. **AGREEMENTS AND DECLARATIONS**

The ~~p~~Parties agree that:

- 22.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- 22.2 nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council or County Council in the exercise of any other statutory function.

23. **NOTICES**

- 23.1 Any notice or other communication to be given under this ~~D~~eed must be in writing and must be:

- 23.1.1 delivered by hand; or

- 23.1.2 sent by pre-paid first-class post or other next working day delivery service.

- 23.2 Any notice or other communication to be given under this ~~D~~eed must be sent to the relevant party as follows:

23.2.1 to the Council at the address appearing above and marked for the attention of the Head of Planning ~~and~~ Economic Development and Climate Change;

23.2.2 to the County Council at the address appearing above marked for the attention of the Chief Legal Officer-;

23.2.3 to the First Owner at the address given above ;

23.2.4 to the Second Owner at the address given above;

23.2.5 to the First Mortgagee at the address given above and marked for the attention of [xxxxx]

23.2.6 to the Second Mortgagee at the address given above and marked for the attention of [xxxxxx]

23.2.7 to the Developer at the address given above and marked for the attention of [xxxxxxxxx]

as otherwise specified by the relevant party by notice in writing to each other party.

23.3 Any notice or other communication given in accordance with clause ~~0~~23.1 and clause ~~0~~23.2 will be deemed to have been received:

23.3.1 if delivered by hand, on signature of a delivery receipt [or at the time the notice or document is left at the address] provided that, if delivery occurs:

23.3.1.1 before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day; and

23.3.1.2 if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

23.3.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

23.4 A notice or other communication given under this Deed is not validly given if sent by email unless otherwise agreed by the Parties in writing.

23.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. **THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

25. **VALUE ADDED TAX**

25.1 Each amount stated to be payable by the Council, County Council, or the Owner to another party other under or pursuant to this Deed is exclusive of VAT (if any).

25.2 If any VAT is at any time chargeable on any supply made by the Council, County Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

26. **APPEAL DECISION**

26.1 The Parties agree and confirm that the obligations set out in this Deed are planning obligations and the Council and the County Council agree that they all comply with the tests set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) ("Regulation 122").

26.2 If the Secretary of State or the Inspector states in his or her Appeal Decision that any specific planning obligation(s) herein does not comply with the requirements set out at Regulation 122(2) of the CIL Regulations, and/or that any such obligation is not a material planning consideration in respect of the determination of the Appeal and/or that he/she attaches no weight to the relevant obligation(s) for the purposes of his/her determination then the relevant obligation so expressly specified in the Appeal Decision ~~letter Letter~~ shall from the date of the Appeal Decision cease to have effect and the Parties to this Deed and their successors in title shall not be under any obligation to comply with that obligation PROVIDED THAT the remaining obligations in this Deed shall remain in full force and effect and for the avoidance of doubt where the Secretary of State or the Inspector is silent upon any obligations then the obligations shall apply and be enforceable ~~by the~~ in accordance with the terms of this Deed.

27. **GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England.

This Deed has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a Deed by affixing the
COMMON SEAL ~~The **COMMON SEAL**~~ of
HERTSMERE BOROUGH COUNCIL
~~was by affixed to this document~~ in the
presence of:

Authorised signatory

The **COMMON SEAL** of
HERTFORDSHIRE COUNTY COUNCIL
was affixed to this ~~document~~ Deed in the
presence of:

Authorised signatory

Signed as a Deed by
ROBERT BRIAN PRINCE

in the presence of:

.....

Signature

Signature of Witness:

Name of Witness: (in Block Capitals):

Address of Witness:

Occupation of Witness:

Signed as a ~~D~~eed by

SUSAN RITA PRINCE

in the presence of:

.....

Signature

Signature of Witness:

Name of Witness: (in Block Capitals):

Address of Witness:

Occupation of Witness:

Signed as a ~~D~~eed by

JOHN ANTHONY MURPHY

in the presence of:

.....

Signature

Signature of Witness:

Name of Witness: (in Block Capitals):

Address of Witness:

Occupation of Witness:

Signed as a ~~d~~Deed by

**BEEHCROFT DEVELOPMENTS
LIMITED** acting by one director

in the presence of:

.....

Director

Signature of Witness:

Name of Witness:(in Block Capitals):

Address of Witness:

Occupation of Witness:

INSERT ATTESTATION CLAUSES FOR FIRST MORTGAGEE

INSERT ATTESTATION CLAUSES FOR SECOND MORTGAGEE

SCHEDULE 1

Affordable Housing

1. The Owner covenants with the Council so as to bind each and every part of the Application Site as follows:
 - 1.1 To submit the Affordable Housing Scheme to the Council for approval prior to Commencement of Development and the Owner covenants not to Commence until the Affordable Housing Scheme has been submitted to the Council and approved by the Council in writing to the Owner.
 - 1.2 Following Commencement of Development to construct the Affordable Housing Units in accordance with the approved Affordable Housing Scheme and the Agreed Mix subject to the Council having nomination rights for all of Affordable Housing Units.
 - 1.3 No more than {75%} of Market Housing Units shall be Occupied until all of the Affordable Housing Units have been constructed in accordance with the approved Affordable Housing Scheme and the Agreed Mix and made ready for residential occupation and written notification of such has been received by the Council; and
 - 1.4 No more than {75%} of Market Housing Units shall be Occupied until the Owners shall have transferred the freehold interest or leasehold interest for a term of no less than 125 years on a full repairing and insuring basis in the Affordable Housing Units to the Council or a Registered Provider with the benefit of the following:
 - 1.4.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units ;and
 - 1.4.2 full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining and up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains.
 - 1.5 Any Affordable Rented Housing to be provided pursuant to the Affordable Housing Scheme shall be provided as Affordable Rented Housing and subject to the provisions of this Deed shall not be Occupied other than as Affordable Rented Housing.
 - 1.6 Any Social Rented Housing to be provided pursuant to the Affordable Housing Scheme shall be provided as Social Rented Housing and subject to the provisions of this Deed shall not be Occupied other than as Social Rented Housing.

1.7 Any Discounted Market Housing to be provided pursuant to the Affordable Housing Scheme shall be provided as Discounted Market Housing and subject to the provisions of this Deed shall not be Occupied other than as Discounted Market Housing and in the case of Discounted Market Dwellings :

- 1.7.1 not to transfer or otherwise dispose of any Discount Market ~~—~~Dwelling to any person other than an Eligible Household as approved by the Council;
- 1.7.2 Not to transfer or otherwise dispose of any Discount Market Sales Dwelling other than subject to a Discount Restriction at any time.

1.8 The Owners shall procure that the Registered Provider shall grant to the Council 100% (one hundred per cent) of nomination rights for initial lettings and 100% (one hundred per percent) of nomination rights for re-lettings (or as otherwise agreed in writing by the Council) of the Affordable Rented Housing and Social Rented Housing and to procure that the Registered Provider shall enter into a ~~N~~ominations ~~A~~greement with the Council in such form as the Council may reasonably require to comply with this sub-paragraph.

1.9 From the date of Practical Completion of the Affordable Housing Units shall be used only in accordance with paragraphs 1.5-1.7 of this Schedule save that it is hereby declared that the provisions of this Schedule shall:

- a) not bind a chargee exercising its power of sale or any Receiver provided that the obligations in paragraph 1.10 of this Schedule shall first have been complied with and upon completion of such disposal the covenants and obligations in this Schedule 1 shall cease to apply and determine in respect of the whole or the relevant part of an Affordable Housing Unit;
- b) cease to apply to the whole or any part of the Affordable Housing Unit which is transferred or leased by any chargee referred to in subparagraph (a) above and shall not bind any persons or bodies deriving title from or through such chargee; and
- c) not bind any Protected Tenant or any person deriving title through or under such Protected Tenant nor bind the mortgagee or chargee or Receiver of such Protected Tenant

1.10 The chargee or receiver shall provide in seeking to dispose of any of the Affordable Housing Units not less than 3 (three) months prior written notice to the Council of its intention to dispose and:

- (a) the Council shall be at liberty during the said period of 3 (three) months to seek to identify another Registered Provider to complete a transfer of the

Affordable Housing Units for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest costs, charges and expenses; and

- (b) in the event that such transfer to another Registered Provider has not completed within the said period of 3 (three) months then the Chargee or Receiver shall be entitled to dispose of the relevant Affordable Housing Unit(s) free of the restrictions set out in this Schedule and always provided that any person or body who has obtained title to any Affordable Housing Unit(s) from a Chargee or Receiver after the procedure set out in this paragraph 1.9 has been followed shall not be bound by the restrictions in this Schedule nor shall any person deriving title from them or any successors in title to any of them.

SCHEDULE 2

Biodiversity Net Gain

1. HMMP and Biodiversity Gain Plan

The Owner covenants with the Council so as to bind the whole of the Application Site as follows:

- 1.1 To submit the HMMP to the Council with the Biodiversity Gain Plan for approval prior to Commencement.
- 1.2 Not to Commence the Development unless and until the Council has approved the HMMP and the Biodiversity Gain Plan in writing to the Owner (such approval not to be unreasonably withheld or delayed by the Council);
- 1.3 Not to Occupy or otherwise permit the Occupation of any of more than 80% of the Development until:
 - 1.3.1 The Biodiversity Enhancements set out in the approved Biodiversity Gain Plan and HMMP have been completed.
 - 1.3.2 a completion report, evidencing the completed habitat enhancements, has been submitted to and approved by the Council;
- 1.4 To give notice in writing to the Council within 5 Working Days of completion of the Biodiversity Enhancements set out in the Biodiversity Gain Plan and HMMP.
- 1.5 To manage maintain and monitor the Biodiversity Enhancements in accordance with the approved HMMP for a period of not less than 30 years from the completion of the Biodiversity Enhancements.
- 1.6 To pay to the Council the Biodiversity Net Gain Monitoring Fee for approving the Biodiversity Gain Plan on the date of submission of the Biodiversity Gain Plan to the Council.

2. Off-Site BNG

The Owner further covenants with the Council so as to bind the Application Site as follows:

- 2.1 In the event that the Biodiversity Gain Plan approved by the Council requires the purchase of any off-site Biodiversity Units the Owner undertakes to the Council as follows if the Biodiversity Gain Plan requires the purchase of off-site Biodiversity Units:
 - 2.1.1 To comply with the Cascade in respect of securing the allocation of Biodiversity Units and evidence the use of all reasonable endeavours in

Commented [KA22]: Recent appeal decision stated that it should be all reasonable endeavours

securing the Biodiversity Units in accordance with the Cascade when submitting the Biodiversity Gain Plan; and

2.1.2 To provide the Council with evidence of the allocation of Biodiversity Units on the submission of the Biodiversity Gain Plan; and the purchase of the Biodiversity Units prior to Implementation of the Development;

2.2 Not to Implement the Development until such time as the Council has acknowledged receipt of the notice and evidence to be submitted pursuant to Paragraphs 2.1.1 and 2.1 .2 of this Schedule.

SCHEDULE 3

HEALTHCARE CONTRIBUTION

1. Subject to paragraph 3 below, the Owner covenants with the Council so as to bind the Application Site, as follows:

1.1 To pay 50% of the Healthcare Contribution to the Council prior to any Occupation of the Development.

Commented [KA23]: Seeking instructions on this contribution and when the payment should be made. I will come back to you on this.

1.2 Not to Occupy the Development nor cause nor permit the Occupation of the Development until 50% of the Healthcare Contribution has been paid to the Council.

1.3 To pay the remaining 50% of the Healthcare Contribution to the Council prior to Occupation of the 50th Dwelling on the Development to the Council.

1.4 Not to Occupy more than 50 Dwellings on the Development nor cause nor permit the Occupation of more than 50 Dwellings on the Development until the remaining 50% the Healthcare Contribution has been paid to the Council.

1.5 In the event that prior to the Healthcare Contribution falling due (pursuant to paragraph 1.1 above) CIL monies equivalent to part or the full cost of the Healthcare Contribution ("CIL Healthcare Monies") are unconditionally paid to the Council on behalf of the Integrated Care Board towards the Healthcare Contribution Purposes then the Healthcare Contributions will be reduced by the equivalent CIL Healthcare Monies received by the Council FOR THE AVOIDANCE OF DOUBT:

1.5.1 the Council must have physically received the CIL Healthcare Monies before Occupation of Development for this paragraph to apply; and

1.5.2 the Council being satisfied that the proposed use of the of CIL Healthcare Monies is consistent with the Healthcare Contribution Purposes and will meet needs arising from the Development only; and

Commented [KA24]: Need to take instructions on this.

SCHEDULE 4

Travel Plan and Travel Plan Monitoring Fee

1. Travel Plan Compliance

The Owner covenants with the County Council so as to bind the Application Site as follows:

1.1 Prior to Occupation of the Development: -

1.1.1 To submit a draft Travel Plan for written approval of the County Council and obtain such approval from the County Council (such approval not to be unreasonably delayed or withheld); and

1.1.2 To nominate a Travel Plan Coordinator for written approval of the County Council and obtain such approval from the County Council and such nomination shall include contact details of the proposed Travel Plan Coordinator and the nature of their relationship to the Owners.

1.2 Not to Occupy nor cause nor permit Occupation of the Development until the Travel Plan has been submitted to and approved by the County Council.

1.3 To carry out baseline surveys and submit an updated Travel Plan to the County Council to be approved including amended targets where relevant, within 3 months of the Development being first Occupied subject to paragraph 1.6 below.

1.4 To carry out baseline surveys upon the occupation of the 75 % of the Dwellings and submit an updated Travel Plan to be approved by the County Council, including amended targets where relevant, within 3 months of occupation of 75% Dwellings.

1.5 To submit a draft Resident Travel Pack and the Sustainable Travel Voucher to the County Council for written approval by the County Council no less than three months prior to first Occupation.

1.6 Not to Occupy nor permit or allow Occupation of any Dwelling until the draft Travel Pack and Sustainable Travel Voucher have been approved in writing by the County Council.

1.7 To provide a Resident Travel Pack to each Dwelling forming part of the Development within one (1) month of the first two Occupations of each Dwelling.

1.8 To provide a Sustainable Travel Voucher to each Dwelling forming part of the Development within one (1) month of the first Occupation of each Dwelling.

- 1.9 At all times following Occupation of the Development:-
- 1.9.1 comply with the terms of the Travel Plan including but not limited to implementing any actions by the specified dates in the Travel Plan
 - 1.9.2 promote and publicise the agreed Travel Plan to owners occupiers and visitors to the Development;
 - 1.9.3 implement the Travel Plan by the dates within the limits as set out in the Travel plan;
 - 1.9.4 carry out the Travel Plan Annual Review annually on the corresponding calendar month for a period commencing one year after the Travel Plan Baseline Survey Collection Date and continuing until five (5) years after full occupation and submit a written report setting out the findings of such review to the County Council within three (3) calendar months from the date of each Travel Plan Annual Review (such report shall include (but shall not be limited to) recommendations for amendments or improvements to the approved Travel Plan whether or not the objectives of the Travel Plan have been achieved); and
 - 1.9.5 comply with any variations or amendments to the Travel Plan permitted by this Deed which shall in addition include any reasonable amendments or improvements required by the County Council and notified to the Owner following review of the report submitted in sub-paragraph 12.9(d) above and notified in writing to the Owners within three (3) calendar months from the date of receipt of such report.
 - 1.9.6 In relation to the Site include in any transfer, lease or licence of any part or parts of the Site a covenant that the purchaser tenant or occupier will comply with the approved Travel Plan for such part or parts of the Site once it has been approved by the County Council and further that they will use all reasonable endeavours to enforce such obligation against any such purchaser tenant or occupier
 - 1.9.7 Within twenty (20) Working Days of the transfer or letting or licensing of the Site or any part or parts thereof to procure the delivery to the County Council of a notice giving the following details
 - 1.9.7.1 the name and address of the purchaser and/or tenant;
 - 1.9.7.2 a description of the premises demised;
 - 1.9.7.3 the length of the term; and

1.9.7.4 sufficient extract of the lease setting out the terms of_ the covenant expressed in favour of the County Council in relation to the Travel Plan

- 1.10 if a Travel Plan Remedial Measures Notice is served upon the Owner by the County Council the Owner shall carry out the measures and actions specified in the Travel Plan Remedial Measures Notice in accordance with the timescales set out within it.
- 1.11 if in the reasonable opinion of the County Council the Owners have failed to comply with the Travel Plan Remedial Measures Notice within the timescale specified therein the Owners acknowledge that they will be in breach of this Deed and that the County Council may take such further action in respect of that breach or breaches as it considers appropriate without further recourse to the Owner

2. Travel Plan Monitoring Fee

The Owner covenants with the County Council so as to bind the Application Site as follows:

- 2.1 To pay to the County Council the first instalment of the Travel Plan Monitoring Fee (£1,200) to the County Council prior to Occupation of any Dwelling within the Development ("the First Occupation Date").
- 2.2 Not to cause or permit the Occupation of any Dwelling in the Development until the first instalment of the Travel Plan Monitoring Fee has been paid to the County Council.
- 2.3 To pay the second instalment of the Travel Plan Monitoring Fee (£1,200) to the County Council on the first anniversary of the First Occupation Date.
- 2.4 To pay the third instalment of the Travel Plan Monitoring Fee (£1,200) to the County Council on the second anniversary of the First Occupation Date.
- 2.5 To pay the fourth instalment of the Travel Plan Monitoring Fee (£1,200) to the County Council on the third anniversary of the First Occupation Date.
- 2.6 To pay the fifth and final instalment of the Travel Plan Monitoring Fee (£1,200) to the County Council on the fourth anniversary of the First Occupation Date.

SCHEDULE 5

COUNTY COUNCIL AND ~~DISTRICT~~ COUNCIL OBLIGATIONS

1. The County Council covenants with the Owner:
 - 1.1 To use the financial contributions paid to the County Council solely in accordance with the purposes set out in this Deed.
 - 1.2 To repay any financial contribution remaining unspent or uncommitted 10 years after the date of payment to the party who paid such financial contribution together with any interest accrued.
2. The Council covenants with the Owner:
 - 2.1 ~~From the date of Commencement of Development until the Healthcare Contribution is due under paragraphs 1 and 3 of Schedule 3 of this Deed the Council (on behalf of the Integrated Care Board) will use reasonable endeavours to bid for CIL for the Healthcare Contribution Purposes in each yearly CIL bidding round and shall provide written confirmation of the bid request to the Owner within seven working days of the bid being submitted-.~~
 - 2.2 ~~In the event the Council has been unconditionally paid the CIL Healthcare Monies before the triggers in paragraphs 1 and 3 of Schedule 3 of this Deed then it will deduct these from the Healthcare Contribution subject to it being satisfied that the proposed use of the of CIL Healthcare Monies is consistent with the Healthcare Contribution Purposes and will meet needs arising from the Development only.~~
 - 2.3 To release all or part of the Healthcare Contribution to the Integrated Care Board following written request from the Integrated Care Board detailing what sums are requested and what those sums are specifically requested for subject to it being satisfied that the proposed use of the of sums is consistent with the Healthcare Contribution Purposes and will meet needs arising from the Development.
 - 2.4 To supply to the Owner any correspondence in relation to the obligation in paragraph 2.3 above as soon as reasonably practicable following written request from the Owner.

Commented [KA25]: Seeking instructions on this.

Commented [KA26]: As above.

SCHEDULE 6
PROFORMA

EVENT NOTIFICATION AND PAYMENT
PURSUANT TO SECTION 106 AGREEMENT

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE.....

HCC LEGALREFERENCE

SITE ADDRESS

SITE OWNER DETAILS

Name

Contact name

Address

Telephone nos

Main

Mobile

Email

EVENTS BEING NOTIFIED

Dates:

Initiation of planning permission: 23/1795/OUT

Commencement/Number of Units (if relevant):.....

Completion of Development/Number of Units (if relevant) :.....

Occupation of Development/Number of Units (if relevant):.....

COMPLIANCE WITH OBLIGATION(S)

Schedule **Paragraph**

Details of obligation and compliance

PAYMENT OF S106 CONTRIBUTIONS

<u>Payment Type</u>	<u>Amount</u>	<u>Interim Indexation</u>	<u>Final Indexation</u>	<u>Total</u>	<u>Payable to</u>
	<u>X</u>	<u>Y</u>	<u>Z</u>	<u>X+Y</u>	
	<u>£</u>	<u>£</u>	<u>£</u>	<u>£</u>	

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

a)

Head of Planning and Economic Development

Hertsmere Borough Council

Civic Offices

Elstree Way, Borehamwood, WD6 1WA (Ref: 23/1795/OUT)

b)

The Director of Law and Governance
Hertfordshire County Council
County Hall
Pegs Lane
Hertford
Hertfordshire
SG13 8DE
(Ref: _____)

ANNEX A
PLAN 1
Site Location Plan

ANNEX B
PLAN 2

ANNEX 3