

DATED

2022

HARLEX (RLP TIMPERLEY) LLP

to

TRAFFORD BOROUGH COUNCIL

**PLANNING OBLIGATION BY DEED OF UNILATERAL UNDERTAKING PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
RELATING TO THE LAND KNOWN AS WORLD OF PETS, THORLEY LANE, TIMPERLEY,
WA15 7PJ**

Appeal reference: APP/Q4245/W/22/3306715
(Planning Application reference: 105905/OUT/21)

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SCHEDULE 116

SCHEDULE 2 **Error! Bookmark not defined.**

SCHEDULE 318

SCHEDULE 421

THIS UNILATERAL UNDERTAKING is given on the day of 2022

BY:

- (1) **HARLEX (RLP TIMPERLEY) LLP** (company registration number OC423798) whose registered office is at Third Floor Queensberry House, 3 Old Burlington Street London, W1S 3AE (the "**Owner**")

TO:

- (2) **TRAFFORD BOROUGH COUNCIL** of Trafford Town Hall, Stretford, M32 0TH (the "**Council**")

RECITALS

- (A) The Council is the local planning authority for the purposes of section 106 of the 1990 Act and the local highway authority and the education authority for the area in which the Site is situated.
- (B) The Owner is the registered freehold proprietor of that part of the Site registered at HM Land Registry under title number GM738190.
- (C) The Council is the registered freehold proprietor of that part of the Site registered at HM Land Registry under title number GM159108.
- (D) The Owner has appealed against the Council's refusal (by way of a decision notice dated 10 March 2022 of the Planning Application (the "**Appeal**").
- (E) The obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act.
- (F) The Owner is prepared to enter into this Deed in order to secure the planning obligations it creates in favour of the Council the event that Planning Permission is granted pursuant to the Appeal and agrees to comply with the obligations, covenants and restrictions contained in this Deed.
- (G) The Owner considers that the planning obligations contained in this Deed are (i) necessary to make the Development acceptable in planning terms; (ii) directly relate to the proposed Development; and (iii) that they are fairly and reasonably related in scale and kind to the Development in accordance with both regulation 122 of the CIL Regulations and paragraph 57 of the NPPF.

DEFINED TERMS

1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

"1990 Act" means the Town and Country Planning Act 1990 (as amended);

"Actual Mix" means the size type tenure and aggregate number of Dwellings referred to in the notice of Reserved Matters Approval to be used by the Council for the purposes of calculating the amount of the Education Contribution;

"Affordable Housing" means housing for sale or rent provided to eligible households who needs are not met by the market and eligibility is determined with regard to local incomes and national house prices in accordance with Annex 2 of the NPPF;

"Affordable Housing Land" means the land on which the Affordable Housing Units will be constructed in accordance with the Planning Permission.

"Affordable Housing Scheme" means a scheme to be submitted for the prior approval of the Council which specifies in relation to each Phase of the Site:

- (a) The number of Affordable Housing Units;
- (b) Details of the tenure, type and size of the Affordable Housing Units in accordance with the Agreed Mix;
- (c) The timing of construction, location and distribution of the Affordable Housing Units within each Phase, ensuring that the Affordable Housing Units are integrated with the Open Market Dwellings; and
- (d) Details of how the proposed design and construction of the Affordable Housing Units will ensure that the Affordable Housing Units are materially indistinguishable (in terms of outward design and appearance) from the Open Market Dwellings of similar size within the Development

and which may be amended from time to time with the written approval of the Council

"Affordable Housing Provider" means: (a) a registered provider who is registered with the RSH pursuant to section 116 of the Housing and Regeneration Act 2008 or any successor body; (b) a non- profit making body which is registered with the RSH and/or any other body which is authorised by the RSH to own and manage Affordable Housing; or (c) any other provider of Affordable Housing approved by the Council;

"Affordable Housing Units" means (unless otherwise agreed with the Council in writing) that not less than 45% of the Dwellings on the Development shall be provided as Affordable Housing to be identified pursuant to the Affordable Housing Scheme to be Constructed in accordance with the Planning Permission, this Deed and the approved Affordable Housing Scheme and **"Affordable Housing Unit"** shall be construed accordingly;

"Affordable Rented Units" means Affordable Housing that meets all of the following conditions:

- (a) The rent is set in accordance with the Government of the United Kingdom's rent policy for social rent or affordable rent, or is at least 20% below local market rents (including service charge where applicable);

- (b) The landlord is a registered provider; and
- (c) It includes provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative Affordable Housing provision.

"Agreed Mix" means the tenure mix of Affordable Housing Units to be submitted for the prior approval of the Council in writing, and which shall be determined having regard to the identified Housing Need within the Council's administrative area and which (unless otherwise agreed by the Council in writing) shall comprise 25% Affordable Rented Units and 75% Intermediate Housing Units;

"Appeal" means the appeal lodged in respect of the refusal by the Council of the Application and given reference number APP/Q4245/W/22/3306715;

"Application" means the application for Planning Permission to carry out the Development at the Site (as may be revised by substituted or additional drawings and material) and given the registered number 105905/OUT/21;

"Biodiversity Gain" means a quantifiable amount of biodiversity benefit;

"Biodiversity Metric" means the recognised biodiversity metric calculation system published by Natural England from time to time to measure and account for biodiversity losses and gains resulting from development or land management change (or in the absence of any metric published by Natural England, such other metric as may be agreed by the Owner and the Council);

"Biodiversity Net Gain" means the Biodiversity Gain that is achieved over the Biodiversity Pre-Development Site Value across the Development as a whole calculated in accordance with the Biodiversity Metric.

"Biodiversity Net Gain Target" means 10% Biodiversity Net Gain across the Development as a whole:

"Biodiversity Net Gain Contribution" means the sum (exclusive of VAT if applicable) to be calculated in accordance with the formula set out at Schedule 4 of this as part of the Biodiversity Net Gain Scheme to be submitted for the prior approval of the Council pursuant to paragraph 2.1 of Schedule 1 of this Deed to achieve the Biodiversity Net Gain Target in the event that the Biodiversity Post-Development Site Value does not deliver the Biodiversity Net Gain Target payable as a contribution towards the creation of new habitats in accordance with the Biodiversity Net Gain Scheme;

"Biodiversity Net Gain Scheme" means a scheme to be submitted for the prior written approval of the Council which sets out how the Biodiversity Net Gain Target will be achieved and which shall include the following details:

- (a) The final calculation of the Biodiversity Net Gain Contribution;
- (b) Whether the Biodiversity Net Gain Contribution is proposed to be paid to the Council or its Nominees and details of the Nominees in the event that it is proposed to be paid to the Nominees which FOR THE AVOIDANCE OF DOUBT will be at the discretion of the Council;

- (c) The identity of an appropriate receptor site(s) at which the Biodiversity Net Gain Contribution is to be expended which includes the King George Pool, Altrincham Golf Course and Davenport Green receptor sites; and
- (d) Details of the proposed measures to secure the Biodiversity Net Gain measures in the event that the Biodiversity Net Gain Contribution is to be paid to a Nominee(s).

"Biodiversity Onsite Compensation" means biodiversity measures to be implemented within the Site as part of the Development in accordance with the Biodiversity Onsite Compensation Scheme to be submitted for the prior approval of the Council in accordance with paragraph 2.1 of Schedule 1 of this Deed;

"Biodiversity Onsite Compensation Certificate" means a certificate or certificates in writing relating to the Biodiversity Onsite Compensation provided by a suitably qualified and experienced ecologist (the identity of whom has been approved by the Council in writing) that confirms that the Biodiversity Onsite Compensation has been laid out in accordance with the approved Biodiversity Onsite Compensation Scheme;

"Biodiversity Onsite Compensation Scheme" means a scheme to be submitted for the prior written approval of the Council detailing the Biodiversity Onsite Compensation and which shall include the following details:

- (a) The Biodiversity Post-Development Site Value;
- (b) The programme for the delivery of the Biodiversity Onsite Compensation; and
- (c) Details of the measures proposed to maintain the Biodiversity Onsite Compensation;

"Biodiversity Pre-Development Site Value" means 10.15 Biodiversity Units, being the baseline biodiversity value of the Site prior to the Development and calculated as part of the Update Ecological Impact Assessment dated July 2021 submitted with the Application in accordance with the Biodiversity Metric;

"Biodiversity Post-Development Site Value" means the number of Biodiversity Units that shall be achieved through the Biodiversity Onsite Compensation to be delivered as part of the Biodiversity Onsite Compensation Scheme approved in accordance with this Deed (calculated in accordance with the Biodiversity Metric) such score to be submitted for the prior written approval of the Council as part of the Biodiversity Onsite Compensation Scheme;

"Biodiversity Units" means the measure of biodiversity resource to be quantified and assessed in accordance with the Biodiversity Metric;

"Chargee" means any mortgagee or chargee of the Affordable Housing Units or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or under the terms of any security documentation or any administrator (however appointed) (including if relevant a housing administrator) who has taken or is intending to take action following a default including repayments or any person or bodies deriving title through such persons;

"CIL Regulations" means the Community Infrastructure Levy Regulations 2010 (as amended);

"Commencement" means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the expressions **"Commence"**, **"Commences"**, **"Commencement"** and **"Commenced"** shall be construed accordingly;

"Commencement Date" means the date on which the Planning Permission is Commenced;

"Construction" means the construction of any building forming part of the Development including footings or foundation and **"Construct"** and **"Constructed"** shall be construed accordingly;

"Council Monitoring Fee" means the sum of *** to be paid by the Owner to the Council pursuant to clause 4.1 of this Deed towards the Council's reasonable and proper administrative costs of monitoring the Owner's compliance with the provisions of this Deed;

"Deed" means this deed of unilateral undertaking;

"DEFRA" means the HM Government Department for Environment, Food and Rural Affairs (or any successor Government Department from time to time);

"Development" means the outline planning application for up to 116 no. residential dwellings with all matters reserved aside from access, for which detailed consent is sought as set out in the Application;

"Disposal" means the sale, transfer, option, gift exchange, declaration of trust, assignment lease and including a contract for any such disposal and **"Disposals"** **"Dispose"** and **"Disposed of"** shall be construed accordingly;

"Dwellings" means the residential dwellings to be constructed on the Site as part of the Development pursuant to the Planning Permission and including all Open Market Dwellings and Affordable Housing Units and reference to **"Dwelling"** shall mean any one such unit;

"Dwelling Mix" means the illustrative size type tenure and total number of Dwellings set out in Appendix 2 of this Deed used by the Council to estimate the amount of the Education Contribution;

"Education Contribution" means the Secondary School Contribution;

"Education Contribution Calculation" means the calculation to be submitted by the Owner to the Council for the prior written approval of the Council pursuant to paragraph 1 of schedule 1 of this Deed setting out the calculation of the Education Contribution in accordance with the formula specified in Appendix 2 of this Deed;

"Environment Bank" means the Environment Bank Limited (company number 05944540) whose registered office is at Low Bramley Grange Farm, Bramley Grange, Grewelthorpe, Ripon, North Yorkshire, HG4 3DN together with its successors;

"Expert" means an independent and suitable person holding appropriate professional qualifications and with at least 10 years' post qualification experience relevant to the subject matter of the dispute appointed in accordance with the provisions of clause [7] of this Deed to determine a dispute;

"Finally Determined" means that:

- (a) Permission to proceed has been refused by the highest court from which such permission may be sought and no further application for permission may be made;
- (b) The court has given judgment in the matter and the period within which an appeal against such court judgment has to be made has expired without any such appeal being made; or
- (c) The court has given judgment on any and all appeals made against an earlier court judgment and no further appeal may be made or the period within which an appeal has to be made has expired without any such appeal being made;

and **"Final Determination"** shall be construed accordingly;

"Full Occupation" means the first date on which 90% of the Dwellings in the Development has been Occupied

"Help to Buy Agent 1" means the agent appointed by the Government of the United Kingdom to help provide Help to Buy schemes across the North of England;

"Homes England" means the successor body to the Homes and Communities Agency created pursuant to the Housing and Regeneration Act 2008 exercising the functions in relation to the funding of affordable housing and being the regulator of social housing providers in England and includes any successor body exercising similar functions;

"Housing Need" means living in unsuitable housing conditions and/or being unable to afford suitable housing at open market prices either to rent or to buy;

"Index" means the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Price Index (the **"BCIS Index"**) or (if such index ceases to be published) such alternative basis for indexation most closely comparable to the BCIS Index as may be agreed between the Owner and the Council;

"Index Linked" means any sum payable to the Council pursuant to this Deed shall be adjusted in accordance with any change in the Index between the date of this Deed and the date of payment in accordance with clause 5 of this Deed and **'Indexation'** shall be construed accordingly;

"Intermediate Housing" means Shared Ownership Housing and/or such other intermediate forms of Affordable Housing tenure or other tenures including Other Affordable Routes to Home Ownership and which accords with the NPPF and which are proposed by the Owner and are agreed by the Council in writing and **"Intermediate Housing Units"** shall be construed accordingly;

"New Thorley Lane Roundabout Contribution" means the sum of £35,000 Index Linked to be paid by the Owner to the Council in accordance with paragraph *** of

Schedule 1 of this Deed payable as a contribution towards the costs of construction of a new Thorley Lane roundabout which is outside the scope of the Section 278 Highway Works

"Nominations Agreement" means an agreement which may at the discretion of the Council be entered into between the Council and the Affordable Housing Provider that governs the Council's nomination rights for Occupation of any Affordable Housing Units and which may: (a) provide for the Council to have nomination rights [to all initial and 75% of subsequent vacancies] in accordance with the Council's allocation policy in force at the relevant time, with the Affordable Housing Provider having nomination rights to the balance of vacancies; (b) require the Affordable Housing Provider not to unreasonably refuse a tenancy to a nominee put forward by the Council; and (c) refer to the Council's tenancy strategy, the Council's allocation scheme and any letting plan which is put in place for the Development or the relevant Phase;

"Nominee" means the Environment Bank or such other body approved by the Council who is capable of delivering the Biodiversity Offsetting Scheme;

"NPPF" means the National Planning Policy Framework 2021 and any replacement national planning policy document;

"Occupy" means occupation for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration, occupation for marketing or display, occupation in relation to security operations or occupation for the purposes of carrying out any Preparatory Operation and the expressions **"Occupation"** and **"Occupied"** shall be construed accordingly;

"Open Market Dwelling" means a Dwelling that is not an Affordable Housing Unit and the expression **"Open Market Dwellings"** and **"Open Market Housing"** shall be construed accordingly;

"Open Space Certificate" means a certificate or certificates in writing relating to the Open Space Land issued by a chartered landscape architect and in relation to the Play Space issued by an inspector registered on the register of play inspectors international that confirms that the Open Space and Play Space has been laid out in accordance with the approved Open Space and Play Space Scheme;

"Other Affordable Routes to Homes Ownership" means housing provided for sale and provides a route to ownership for those who could not achieve home ownership through the market, including Shared Ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which included a period of intermediate rent);

"Parties" means the Owner and the Council as the context so requires, each being a **"Party"**.

"Phase" means a part of the Site as shall be identified as a phase of the Development pursuant to the phasing plan to be approved by the Council pursuant to a planning condition imposed on the Planning Permission;

"Planning Inspector" means the Planning Inspector appointed on behalf of the Secretary of State to determine the Appeal on behalf of the Secretary of State;

"Planning Permission" means any planning permission for the Development that may be granted by the Secretary of State pursuant to the Appeal;

"Practical Completion" means the substantial completion of any works, part or phase (as the case may be) of the Development whereupon a certificate of practical completion or in the case of the Section 278 Works a provisional certificate is issued by an architect, engineer or other suitably qualified professional and the terms **"Complete"**, **"Completed"**, **"Practically Complete"** and **"Practically Completed"** shall be construed accordingly;

"Preparatory Operation" means an operation or item of work of or connected with or ancillary to archaeological investigation, exploratory boreholes and trial pits, survey of existing structures, demolition, site clearance and excavation (including associated temporary works) or site preparation, site reclamation and site remediation works, preliminary landscaping, diversion, decommissioning or laying of services for the supply or carriage of water, sewerage, gas, electricity, telecommunications or other media or utilities, the erection of fences, hoardings and scaffolding and construction of temporary access and service roads, and other works and site establishment preparatory to the commencement of construction including temporary extinguishment and closure of public rights affecting the Site and operations permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015;

"Reasonable Endeavours" mean that the Party responsible for the performance must exert itself to take those reasonable steps which a prudent and determined person acting in their own interests and anxious to achieve the desired objective would take, including within the constraints of the project programme, and for the avoidance of doubt includes the ability to demonstrate that the relevant Party has taken serious and detailed consideration of its contractual commitment pursuant to this Deed and has utilised such reasonable methods as are likely to achieve the desired result and recognising that such performance is of material importance to enable the result to be achieved **PROVIDED THAT** this shall not require any Party to continue with such endeavours if it is clear that to do so would be likely to be futile;

"RSH" means the Regulator of Social Housing as established by section 80A of the Housing and Regeneration Act 2008 or any successor organisation or body charged with the function of regulating the provision of Affordable Housing within the Council's administrative area;

"Receiver" means any receiver (including an administrative receiver) appointed by a 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 (howsoever appointed) including a housing administrator;

"Regulator" means Homes England or the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

"Retained Equity" means the proportion of the Market Value in a Shared Ownership Housing Unit represented by such share of unsold equity;

"Reserved Matters Application" means any application seeking approval of any reserved matters pursuant to the Planning Permission;

"Reserved Matter(s) Approval" means the reserved matters approval or approvals which are obtained in respect of the Planning Permission PROVIDED that where more than one reserved matters approval is obtained in respect of the Development for the purpose of calculating financial contributions payable under the terms of this Deed it shall mean the reserved matters approval that is implemented for the purposes of section 56(4) of the 1990 Act;

"Secondary Education Contribution" means either:

- (i) the sum of £297,036 calculated by reference to the formula set out in Appendix 2 of this Deed and taking account of the Dwelling Mix; or
- (ii) if the Actual Mix differs from the Dwelling Mix a sum calculated in accordance with the formula specified in Appendix 2 of this Deed taking account of the Actual Mix,

and which is payable to the Council as a contribution for the purposes of the expansion of existing secondary schools in the vicinity of the Development.

"Secretary of State" means the Secretary of State for Levelling Up, Housing and Communities (or such other Minister of the Crown to whom the power to hear and determine the Appeal may from time to time be transferred) or any appropriate officer, inspector or body appointed by the Secretary of State for Levelling Up, Housing and Communities having authority to act on his or their behalf;

"Section 278 Agreement" means a valid agreement executed as a deed and to be entered into with the Council pursuant, inter alia, to section 278 of the Highways Act 1980;

"Section 278 Works Specification" means a detailed design specification of the Section 278 Works to be carried out to facilitate the Development to be submitted by the Owner for the prior written approval of the Council and which includes plans and drawings, samples of materials to be used, estimated costs and phasing of delivery.

"Section 278 Works" means the works to be carried out for the purposes of the pedestrian access improvements at the Thorley Lane roundabout to be completed in general accordance with the approved Section 278 Works Specification comprising, in summary: (a) a signalled controlled crossing on Thorley Lane near the roundabout with Wood Lane/Clay Lane and (b) a zebra crossing on Wood Lane with associated highway works;

"Shared Ownership Housing" means a form of tenure granted by lease by the Affordable Housing Provider to be disposed pursuant to shared ownership arrangements within the meaning of section 70(4) of the Housing and Regeneration Act 2008 whereby a purchaser is able to purchase a share of the equity in an Affordable Housing Unit at a minimum of 25% and a maximum of 75% initially (at the option of the buyer) and pay an annual rent of up to 2.75% on the Retained Equity with no limitation on the aggregate equity that can be subsequently acquired by the purchaser (or such other rent or form

of lease as may be approved in writing by the Council and **"Shared Ownership Lease"** shall be interpreted accordingly;

"Shared Ownership Unit" means a unit of Affordable Housing to be made available by an Affordable Housing Provider under a Shared Ownership Lease;

"Site" means the land known as the land on the south side of Wood Lane, Timperley registered at the Land Registry under title numbers GM738190 and GM159108 against which this Deed may be enforced and which is shown for identification purposes only edged red on the Site Plan;

"Site Plan" means drawing number L(00)002- P1 appended hereto at Appendix 1 of this Deed;

"Staircasing" means the purchase by the owner of additional equity in a Shared Ownership Unit and **"Staircased"** and **"Staircases"** shall be construed accordingly;

"Transfer" means in respect of the Affordable Housing Units the transfer to an Affordable Housing Provider of the freehold or grant of a lease for a term of at least 125 years unless otherwise agreed in writing with the Council and **"Transferred"** shall be construed accordingly; and

"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 Words importing one gender shall include all other genders and words of the singular shall include the plural and vice versa.
- 1.4 The reference to any statute or section of a statute includes any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.
- 1.5 Any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears.
- 1.6 Reference to the Site includes any part of it.
- 1.7 Where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 1.8 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their statutory functions.
- 1.9 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 and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done.

2. Effect of this Deed

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.2 The Deed is a planning obligation for the purposes of section 106 of the 1990 Act and the covenants, restrictions and requirements on the part of the Owner in this Deed bind the Owner's interest in the Site and each and every part thereof in whosoever hands the same may come and are enforceable by the Council as local planning authority against the Owner pursuant to section 106(3) of the 1990 Act.
- 2.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 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.
- 2.4 Subject to clause 3.3 of this Deed, the Owner is satisfied that (where applicable) the provisions of this Deed comply with the requirements of Regulation 122 of the CIL Regulations 2010 and, accordingly, the Owner affirms that the planning obligations contained in this Deed are:
 - (a) necessary to make the Development acceptable in planning terms; and
 - (b) directly related to the Development; and
 - (c) fairly and reasonably related in scale and kind to the Development; and
 - (d) compliant in all other aspects with Regulation 122 of the CIL Regulations.
- 2.5 The Owner enters into the obligations (for themselves and their successors in title and persons deriving title from the Owner) with the Council with the intent that the obligations contained in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof.

3. Conditionality

- 3.1 Subject to clauses 3.1 to 3.5 of this Deed, the provisions of this Deed shall come into effect immediately upon completion of this Deed PROVIDED THAT clause 4.1 of this Deed and the obligations and provision in the Schedules to this Deed shall not have any operative effect unless and until:
 - (a) the Planning Inspector has issued the Planning Permission; and
 - (b) Commencement of Development has occurred.

except where the Planning Permission is the subject of any judicial review, planning statutory review or other legal challenge in which event clause 3.2 of this Deed shall apply.
- 3.2 Where the Planning Permission is the subject of any judicial review, planning statutory review or other legal challenge:

- (a) Until such time as such review or challenge has been Finally Determined the terms and provisions of this Deed (save for those provisions which shall have operative effect on the date the Planning Permission is granted) will remain without operative effect notwithstanding the grant of the Planning Permission and the Commencement of the Planning Permission.
 - (b) If following the Final Determination of such review or challenge the Planning Permission is quashed this Deed will cease to have any further effect; and
 - (c) If following the Final Determination of such review or challenge the Planning Permission is capable of being Commenced all of the terms and provisions of this Deed will apply in full in accordance with clauses 3 and 4 of this Deed.
- 3.3 The planning obligations contained within this Deed are conditional upon the Planning Inspector or the Secretary of State (as the case may be) finding that such planning obligations are:
- (a) necessary to make the Development acceptable in planning terms; and
 - (b) directly related to the Development; and
 - (c) fairly and reasonably related in scale and kind to the Development; and
 - (d) compliant in all other aspects with Regulation 122 of the CIL Regulations
- 3.4 If the Planning Inspector concludes that any of the planning obligation contained within this Deed are incompatible with one or more of the tests for planning obligations set out at Regulation 122 of the CIL Regulations and/or it is stated in the Appeal decision that no weight should be attached to any obligation (or any part of the obligation) then the relevant obligation shall immediately, from the date of the Planning Inspector or Secretary of State's (as the case may be) decision letter (without any further action by the Parties) be cancelled and of no effect and the Owner shall be under no obligation to comply with the relevant obligation but such cancellation shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.
- 3.5 For the avoidance of doubt, none of the planning obligations in this Deed will be binding upon and/or enforceable against the Owner if:
- (a) The Planning Inspector or the Secretary of State (as the case may be) dismisses the Appeal such that the Planning Permission is not granted; or
 - (b) The Planning Inspector or the Secretary of State (as the case may be) finds that none of the planning obligations contained within this Deed satisfy the tests for planning obligations set out at Regulation 122 of the CIL Regulations 2010 (as amended), or that the obligations are otherwise not required, and accordingly attaches no weight to the obligations in determining the Appeal.

4. The Owner's Covenants

4.1 The Owner covenants with the Council:-

- (a) To observe and perform the covenants restrictions stipulations and obligations contained in Schedules 1,2 and 3 of this Deed;

- (b) To pay to the Council on completion of this Deed the reasonable legal costs of the Council properly incurred in the negotiation, preparation and execution of this Deed in the fixed sum of £3,000; and
- (c) Not to Commence the Development until it has paid the Council Monitoring Fee to the Council.

5. Indexation

- 5.1 Unless otherwise stated any sum stipulated as being payable by the Owner to the Council pursuant to the provisions of this Deed shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable pursuant to the provisions of this Deed.

6. General

- 6.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registerable as a local land charge by the Council.
- 6.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto.
- 6.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed upon disposing of the whole of his interest in the Site or the part of the Site in respect of which such breach occurs and will be released from all obligations, undertakings and covenants under this Deed in relation to that interest or the relevant part thereof (as the case may be) but without prejudice to his liability for any subsisting breach arising prior to parting with such interest or the relevant part thereof.
- 6.4 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified (or to such other address as may be notified in writing by the relevant party from time to time)
 - (a) In respect of the Owner ***
 - (b) In respect of the Council ***
- 6.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 6.6 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority.
- 6.7 No waiver whether express or implied by the Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute

a continuing waiver and no such waiver shall prevent the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default.

- 6.8 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked modified without the consent of the Owner or otherwise withdrawn or if the Commencement Date has not been initiated in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission.
- 6.9 The Owner shall give the Council written notice of any change of ownership interests in the Site (save for any sale, lease, transfer, mortgage, or other disposal of an individual Dwelling) occurring before all of the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan and to be delivered as soon as practicable following the change of ownership.
- 6.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 6.11 Where the agreement, approval, consent, confirmation or expression of satisfaction is required from the Council under the terms of this Deed such agreement, approval, consent, confirmation or expression of satisfaction must be in writing and shall not be unreasonably withheld or delayed.
- 6.12 Any scheme strategy or plan submitted pursuant to this Deed may be amended from time to time by agreement with the Council and any such approved amended scheme strategy or plan shall apply and be capable of being enforced pursuant to this Deed as if it were the original scheme strategy or plan.

7. Planning consents granted pursuant to section 73 of the 1990 Act

- 7.1 In the event that any new planning permission(s) are granted by the Council pursuant to section 73 of the 1990 Act (as amended) and unless otherwise agreed by the Council the date that the any new planning permission is granted pursuant to section 73 of the 1990 Act (as amended):
 - (a) the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Site granted pursuant to section 73 of the 1990 Act and the Site itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to section 106 of the 1990 Act;
 - (b) the definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under section 73 of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

- (c) this Deed shall be endorsed with the following works in respect of any future section 73 application: *"The obligations in this Deed relate to and bind the Site in respect of which a new planning permission referenced [] has been granted pursuant to section 73 of the Town and Country Planning Act 1990 (as amended)"*.

7.2 Nothing in this clause 13 of this Deed shall fetter the discretion of the Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed.

8. Mortgagees etc.

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

- (a) any mortgagee or Chargee of the whole or any part of the Site from time to time shall have no liability under this Deed unless and until such mortgagee or Chargee takes possession of the Site or the relevant part thereof (as the case may be) in which case it will be bound by the obligations as a person deriving title from the Owner;
- (b) any statutory undertaker or public authority which has or acquires an interest in the Site for the purposes of the provision or connection of electricity, gas, water, drainage, or telecommunications services or for any other statutory function;
- (c) any freehold or leasehold owner or occupier of an individual Dwelling or their respective mortgagee or charge or their successors in title;

9. VAT

9.1 All sums and amounts referred to in this Deed are exclusive of VAT (if any) due or payable in any circumstances save where otherwise provided.

9.2 The Owner shall not be obliged to make any contribution towards the VAT payable by the Council in respect of any works to be undertaken by the Council insofar as and to the extent that the amount of such VAT is (by way of set off or otherwise) recoverable by or reimbursable to the Council.

9.3 VAT shall only be payable by the Owner on production of a valid VAT invoice addressed to the Owner

10. Jurisdiction

This Deed is to be governed by and interpreted in accordance with the law of England and subject to the exclusive jurisdiction of the English Courts.

In witness whereof the Parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1

Education Contribution, Biodiversity, and Highway Works

1. Education Contribution

1.1 The Owner hereby covenants with the Council:

- (a) To submit to the Council for its written approval the Education Contribution Report prior to first Occupation of any Dwelling on the Development.
- (b) Not to first Occupy nor permit the first Occupation of any Dwelling on the Development until the Council have approved the Education Contribution Calculation.
- (c) To pay 50% of the Education Contribution to the Council prior to Occupation of 50% of the Dwellings on the Development.
- (d) Not to Occupy nor permit the Occupation of more than 50% of the Dwellings on the Development until 50% of the Education Contribution has been paid to the Council.
- (e) To pay the balance of the Education Contribution to the Council prior to Full Occupation of the Dwellings on the Development.
- (f) Not to Fully Occupy nor permit the Full Occupation of the Dwellings on the Development until the balance of the Education Contribution has been paid to the Council

2. BIODIVERSITY

2.1 The Owner covenants with the Council:

- (a) To submit the Biodiversity Net Gain Scheme and the Biodiversity Onsite Compensation Scheme to the Council for approval at the date of submission of the first Reserved Matters Application;
- (b) Not to commence the Development until the Biodiversity Net Gain Scheme and the Biodiversity Onsite Compensation Scheme have been approved in writing by the Council;
- (c) To implement the approved Biodiversity Net Gain Scheme prior to first Occupation of the Development and thereafter to fully comply with the approved Biodiversity Net Gain Scheme;
- (d) To pay the Biodiversity Net Gain Contribution to the Council prior to first Occupation of the Development.
- (e) Not to Occupy nor permit first Occupation of the Development unless and until the Biodiversity Net Gain Contribution has been paid to the Council.

- (f) To fully implement the approved Biodiversity Onsite Compensation Scheme in accordance with the programme set out therein PROVIDED THAT the approved Biodiversity Onsite Compensation Scheme shall be fully implemented prior to Occupation of more than 75% of the Dwellings on the Development and thereafter to comply with the approved Biodiversity Onsite Compensation Scheme;
- (g) To submit the Biodiversity Onsite Compensation Certificate to the Borough Council and the District Council prior to Occupation of more than 75% of the Dwellings;
- (h) Not to Occupy nor permit Occupation of more than 75% of the Dwellings on the Development unless and until the approved Biodiversity Onsite Compensation Scheme has been implemented in full and the Borough Council and District Council have received the Biodiversity Onsite Compensation Certificate.

3. NEW THORLEY LANE ROUNDABOUT CONTRIBUTION¹

3.1 The Owner covenants with the Council:

- (a) To pay the New Thorley Lane Roundabout Contribution to the Council prior to Occupation of the Development.
- (b) Not to Occupy or permit Occupation of any part of the Development until the New Thorley Lane Roundabout Contribution has been paid to the Council in full.

4. SECTION 278 HIGHWAY WORKS²

4.1 The Owner covenants with the Council:

- (a) not to Occupy the Development until the Section 278 Works Specification in relation to the Section 278 Works has been submitted to and approved in writing by the Council;
- (b) not to commence the Section 278 Works until the Owner has entered into the Section 278 Agreement with the Council for the purposes of authorising the Section 278 Works;
- (c) not to Occupy nor cause nor permit Occupation of more than 50% of the Dwellings on the Development until such time as the Section 278 Works have been Completed by the Council to the reasonable satisfaction of the Council.

¹ Whether this proposed highways financial contribution meets the tests for planning obligations in Reg.122 of the CIL Regulations is under discussion between the parties.

² Whether the proposed highway works should be secured by planning obligation or by a suitably worded planning condition is under discussion between the Appellant and the Council.

SCHEDULE 2

Affordable Housing

The Owner covenants with the Council as follows:

1. **Provision of Affordable Housing**

- 1.1 Not to Commence the Development of the relevant Phase until the Affordable Housing Scheme in respect of that Phase has been approved in writing by the Council and thereafter the construction of the Affordable Housing Units in the relevant Phase shall be carried out in accordance with the approved Affordable Housing Scheme
- 1.2 To provide the Affordable Housing Units in each Phase in accordance with the Agreed Mix the Planning Permission and approved Affordable Housing Scheme.
- 1.3 To provide not less than 45% of the Dwellings on the Development as Affordable Housing Units.
- 1.4 Not to Occupy nor permit Occupation of:
 - (a) More than 50% of the Open Market Dwellings in each Phase unless and until 50% of the Affordable Housing Units to be provided within that Phase have reached Practical Completion and the Owner has Transferred such Affordable Housing Units; and
 - (b) More than 80% of the Open Market Dwellings in each Phase unless and until 100% of the Affordable Housing Units to be provided within that Phase have reached Practical Completion and the Owner has Transferred such Affordable Housing Units.

2. **Use of Affordable Housing**

- 2.1 Subject to paragraphs 2.2 and 9 of this Schedule, the Affordable Housing Units shall:
 - (a) Remain as Affordable Housing for the lifetime of the Development and all re-lets and re-sales of the Affordable Housing Units will be on the basis that they remain as Affordable Housing in accordance with the terms of this Deed;
 - (b) Not be Occupied otherwise than as Affordable Housing; and
 - (c) Be managed by an Affordable Housing Provider.
- 2.2 The obligations in this Schedule 3 of this Deed shall cease to apply in respect of any Affordable Housing Unit in circumstances where an Occupier:
 - (a) Acquires a freehold or leasehold interest in such Affordable Housing Unit pursuant to a statutory right to acquire or right to buy; or
 - (b) Staircases out by acquiring 100% of the equity in such Affordable Housing Unit.
- 2.3 The Owner shall use Reasonable Endeavours to procure that the Affordable Housing Provider enters into a Nomination Agreement with the Council but in the event that the

Affordable Housing Provider refuses to enter into a Nominations Agreement with the Council no Affordable Housing Unit may be Occupied until the qualifications of the proposed Occupier to Occupy the relevant Affordable Housing Unit have been submitted for the approval of the Council.

- 2.4 Upon the Transfer of any Affordable Housing Unit, the Owner shall cease to be bound by the restrictions in this Deed in respect of that Affordable Housing Unit.

3. Mortgagees and Chargees

- 3.1 The provisions of this Schedule of this Deed shall not be binding on nor enforceable against a mortgagee, Chargee or Receiver of the whole or any part of the Affordable Housing Units and/or Affordable Housing Land or any persons or bodies deriving title through such mortgagee, Chargee or Receiver PROVIDED THAT should such mortgagee, Chargee or Receiver intend to dispose of the whole or any part of the Affordable Housing Units and/or the Affordable Housing Land then it shall:

- (a) give written notice to the Council specifying the Affordable Housing Units and/or Affordable Housing Land that it intends to dispose of;
- (b) give an opportunity to an Affordable Housing Provider (the name and address of which shall be given to the Council) for a period of one month from the date of the written notice referred to in paragraph 3.1(a) to purchase the specified Affordable Housing Units and/or the Affordable Housing Land
- (c) If that Affordable Housing Provider does not elect to purchase the Affordable Housing Units and/or the Affordable Housing Land by the end of the one-month period specified in paragraph 3.1(b) (for the avoidance of doubt totalling a three-month period from the date of the written notice referred to in paragraph 3.1(a)), give an opportunity to the Council for a further period of two months to purchase the specified Affordable Housing Units and/or the Affordable Housing Land; and
- (d) If the disposal of the specified Affordable Housing Units and/or the Affordable Housing Land has not completed by the end of the period referred to in paragraph 3.1 (c), the mortgagee, chargee or Receiver shall be entitled to dispose of the specified Affordable Housing Units and/or the Affordable Housing Land free from the provisions in this paragraph 3, which provisions shall determine absolutely.

- 3.2 The opportunity to purchase the specified Affordable Housing Units and/or the Affordable Housing Land pursuant to paragraphs 3.1(b) or 3.1(c) shall in either case be 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 and costs and expenses

- 3.3 During the period of three months from the date of the written notice referred to in paragraph 3.1(a), the mortgagee, Chargee or Receiver shall use Reasonable Endeavours to reply to any reasonable enquiries raised by the Affordable Housing Provider or the Council (as relevant) in relation to the specified Affordable Housing Units and/or the Affordable Housing Land as expeditiously as possible so as not to hinder the completion of any disposal within the said three-month period

- 3.4 If the Affordable Housing Units are vested or transferred to another provider pursuant to a proposal made by Homes England pursuant to section 152 of the Housing and Regeneration Act 2008 then the provisions of this Deed shall continue (notwithstanding paragraph 3.1) in respect of such other provider
- 3.5 Should Homes England be abolished and its functions not be replaced by any other statutory body, the Council shall fulfil the functions of the Help to Buy Agent 1 in relation to the Affordable Housing Units.

SCHEDULE 3

Biodiversity Net Gain Contribution Formula

The Biodiversity Net Gain Contribution shall be calculated applying the following formula –

$$A = ((B \times 1.1 - C)) = D \times E$$

Where:

A- is the the amount of the Biodiversity Net Gain Contribution

B- is 10.15 (being the Biodiversity Pre-Development Site Value)

C – is the Biodiversity Post-Development Site Value

D- is the number of Biodiversity Units to achieve the Biodiversity Net Gain Target

E – £12,000³ per Biodiversity Unit.

For indicative purposes only, below is an application of the above formula based on the Developer's Update Ecological Impact Assessment dated 1st July 2021 that the Biodiversity Post-Development Site Value is anticipated to be 5.84 Biodiversity Units:

$$10.15 \times 1.1 = 11.165 - 5.84 = 5.325$$

$$5.325 \times 12,000 = 63,900$$

A= £63,900 is the Biodiversity Net Gain Contribution.

³ The amount of each biodiversity unit to be applied in calculating the BNG contribution formula is under discussion between the Appellant and the Council.

APPENDIX 1

SITE PLAN

APPENDIX 2

EDUCATION CONTRIBUTION FORMULA

APPENDIX 3

NOT USED

Executed as a Deed by)
HARLEX (RLP TIMPERLEY) LLP)
acting by a director)

Director Name

Director Signature

In the presence of:

Witness signature

Name of witness (BLOCK CAPITALS):

Address:

Occupation: