

DATED 25 November

2021

-
- | | |
|--|-----|
| MID SUFFOLK DISTRICT COUNCIL | (1) |
| SUFFOLK COUNTY COUNCIL | (2) |
| GLADMAN DEVELOPMENTS LIMITED | (3) |
| JONATHAN JOSEPH BROWN, PATRICIA BROWN AND STEPHEN JOSEPH BROWN T/A JIM BROWN & SON | (4) |

S106 AGREEMENT

Relating to land off Ixworth Road, Thurston



This Deed is made the 25 day of November 2021

Between:

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (“the District Council”) and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (“the County Council”) and
- (3) **JONATHAN JOSEPH BROWN, PATRICIA BROWN** and **STEPHEN JOSEPH BROWN** all of Grange Farm, Thurston Road, Great Barton, Bury St Edmunds, Suffolk IP31 2PS trading in partnership as Jim Brown and Son (“the Owner”) and
- (4) **GLADMAN DEVELOPMENTS LIMITED** (Co Registration No. 03441567) of Gladman House, Alexandria Way, Congleton, Cheshire CW12 1LB (“the Promoter”)

Together “the Parties”

INTRODUCTION

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this deed are enforceable.
2. The County Council is the local highway authority (except for trunk roads) and is the local education authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this deed are enforceable.
3. The ownership and other interests in the Site are as set out in the First Schedule.
4. The Owner and the Promoter have entered into the Promotion Agreement
5. The Promoter submitted the Application to the District Council for the Development and the District Council has resolved to grant the Planning Permission for the Development pursuant to the Application subject to the prior completion of this deed to regulate the Development and to secure the planning obligations contained in this deed.

6. The District Council enters into this deed to the intent that the requirements of the District Council's policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome.
7. The District Council and the County Council consider and the Owner and Promoter acknowledge that the Development should not proceed unless certain restrictions regulating the use of the Site are imposed in the manner hereinafter appearing and pursuant to section 106 of the Act the Parties have agreed to enter into this deed in order to secure the planning obligations contained in this deed.
8. The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this deed meet the test set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

**NOW THIS DEED WITNESSES AS FOLLOWS:
OPERATIVE PART**

1. DEFINITIONS

For the purposes of this deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Second Schedule:

| | |
|---|--|
| “Act” | the Town and Country Planning Act 1990 (as amended) |
| “Affordable Housing” | subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with annexe 2 of the National Planning Policy Framework 2019 |
| “Affordable Housing Contribution” | means the sum calculated in accordance with the District Council's approved affordable housing policies in place at the time to be paid to the District Council to spend on Affordable Housing within the administrative district of the District Council in the event that the Owner is unable to dispose of the Affordable Housing in accordance with the Second Schedule Part 2 |
| “Affordable Housing Nomination Agreement” | an agreement substantially in the form set out in the Sixth Schedule (subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable |

Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and "Nomination Agreement" shall have the same meaning

"Affordable Housing Scheme"

a written scheme approved by the District Council as part of the reserved matters application or the written approval of the District Council identifying the location number of bedrooms, mix and tenure of each Affordable housing Unit (unless otherwise agreed in writing with the District Council)

"Affordable Housing Units"

means thirty-five per cent (35%) (rounded to the nearest whole number) of the total Dwellings to be provided on the Site pursuant to the Affordable Housing Scheme and the Planning Permission to be Occupied as Affordable Housing in accordance with the Affordable Housing Scheme which for the avoidance of doubt and unless otherwise agreed in writing with the District Council shall comprise thirty percent (30%) Shared Ownership Dwellings occupied in accordance with the Help to Buy Agents' procedures' or any that shall replace them and seventy per cent (70%) Affordable Rent Dwellings allocated in accordance with the Council's Choice Based Letting Scheme or such other affordable products as defined in the NPPF and agreed in writing with the District Council

"Affordable Rent"

means housing made available by a Registered Provider as low-cost rental accommodation (as defined by section 69 of the Housing and Regeneration Act 2000) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable

"Application"

the application for outline planning permission for the Development validated by the District Council on 1 May 2019 and allocated reference DC/19/02090

"Approval"

the reserved matters approval which first establishes the Composition of the

Development PROVIDED THAT where more than one reserved matter approval is obtained in respect of the Development for the purposes of calculating liability for the contributions comprising planning obligations in this Agreement shall mean the reserved matter approval which is implemented for the purposes of section 56(4) of the Act

“Car Club”

means a pay-as-you-drive car club offering members access to a vehicle without ownership and which is designed to reduce the levels of car ownership by residents and occupiers of the Development and in the vicinity of the Development;

“Chargee of the Registered Provider”

any mortgagee or chargee of the Registered Provider 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 housing administrator pursuant to section 101 of the Housing and Planning Act 2016

“Chargee’s Duty”

the tasks and duties set out in paragraph 1.9 of Part 2 of the Second Schedule hereto

“Choice Based Lettings Scheme”

an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party

“Commencement of Development”

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of

| | |
|----------------------------------|--|
| | <p>assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, construction of access road; construction of temporary site compound and temporary marketing suite; erection of any temporary means of enclosure and the temporary display of site notices or advertisements and “Commence” and “Commenced” shall be construed accordingly</p> |
| “Completion of the Development” | the date that the last Dwelling is first Occupied |
| “Composition of the Development” | means the total number of Dwellings comprised in the Approval |
| “Cycle Scheme Contribution” | <p>means the sum to be calculated on a per Dwelling basis as:</p> <p>£150 (one hundred and fifty pounds) x total number of Dwellings (Index Linked)</p> <p>to be paid to the District Council in accordance with the Second Schedule to be spent on the provision of a voucher to be supplied to each Dwelling prior to first Occupation for the Occupier to spend on a bicycle</p> |
| “Development” | the outline planning application for the erection of up to two hundred and ten (210) Dwellings and new vehicular access to include planting and landscaping, natural and semi natural green space including community growing space(s), children’s play area and sustainable drainage system (SuDS) to include 35% affordable dwellings as set out in the Application |
| “Dog Bins Contribution” | shall mean the sum of £3,713 (three thousand seven hundred and thirteen pounds) to be paid to the District Council in accordance with the Second Schedule towards the provision of 5 (five) dog bins within the Site and regular emptying and maintenance of the dog bins over 10 (ten) years |
| “Dwelling” | any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the |

| | |
|--|--|
| | Planning Permission and "Dwellings" shall be construed accordingly |
| "Education Contribution" | <p>means the sum to be calculated on a per Dwelling basis as :</p> <p>£5,786.59 (five thousand seven hundred and eighty-six pounds and fifty-nine pence) x total number of Dwellings (Index Linked)</p> <p>to be paid to the County Council in accordance with the Third Schedule towards the Education Purposes</p> |
| "Education Purposes" | means build costs towards a new Primary School Facility and build costs towards a new Preschool Facility |
| "Electric Vehicle Charging Point Contribution" | the sum of £3,000 (three thousand pounds) to be paid to the District Council for the provision of an electric vehicle charging point within the Village of Thurston in the event that a public charging point is not provided by the Owner within the Site |
| "HE" | means Homes England or such other organisation as may from time to time be the Regulator of Social Housing or such other body with statutory force charged with regulating Registered Providers |
| "Highway Works" | <p>A new shared cycleway on the east side of Ixworth Road and controlled crossing point linking the Site to existing footway network</p> <p>Tabletop traffic calming at Norton Road/Ixworth Road junction with controlled crossings</p> <p>Controlled pedestrian on Barton Road near junction with Heath Road.</p> |
| "Highways Agreement" | an agreement made pursuant to section 278 of the Highways Act 1980 as agreed between the Owner and the County Council to secure the delivery of the Highway Works |
| "Highway Consents" | any approvals, consent, permission and orders required from the highway authority or statutory |

| | |
|--|--|
| | undertakers for the carrying out of the Highway Works |
| “Highways Contribution” | shall mean the sum of £45,000 (forty five thousand pounds) to be expended on the Microprocessor Optimised Vehicle Actuation (MOVA) improvement works at the Bunbury Arms Junction, Thurston. |
| “Highways Works Phasing Plan” | shall mean a plan showing all the Highway Works that are to be carried out and shall identify when each of the works is to have been provided prior to occupational Triggers within the Development |
| “Index” | All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation |
| “Index Linked” | the increase in any sum referred to in the Second and Third Schedules by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 12 of this deed |
| “Landscape Buffers” | means: <ul style="list-style-type: none"> (i) a 20 metre deep landscape buffer to be provided behind the visibility splay on Ixworth Road as shown on Drawing No. 18366-003 Rev B (ii) at least a 20 metre deep buffer between built development and the site’s eastern boundary adjacent to Meadow Lane |
| “Landscape Management and Delivery Plan” | means a plan to establish details of the Landscape Buffers such details to include but shall not be limited to: <ul style="list-style-type: none"> (i) the protection of existing hedgerows (ii) native hedgerow species to be planted |

| | |
|-----------------------------------|--|
| | (iii) management and maintenance of the Landscape Buffers |
| “Late Payment Interest” | interest at 4 per cent above the minimum lending rate of the Bank of England from time to time |
| “Management Company” | a company or body who may take over responsibility for the future maintenance of the Open Space which definition may include a resident’s association established for this purpose or a private limited company whether already in existence or formed for the purposes of managing the Open Space |
| “Market Housing Units” | those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units |
| “Nominated Body” | means one or any of the following in the following order: a) the District Council; or b) such other body as the District Council may nominate; or c) a Management Company and “Nominated Bodies” shall be construed accordingly |
| “Notice of Actual Commencement” | notice in writing to advise of the actual date of Commencement of Development |
| “Notice of Expected Commencement” | notice in writing to advise of the expected date of Commencement of Development |
| “Occupation” | occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupied” and “Occupy” shall be construed accordingly |
| “Open Space” | the open space and landscaping and onsite play area to be provided on the Site for use by the |

| | |
|-------------------------------------|---|
| | <p>general public in accordance with the Planning Permission and the Open Space Specification</p> |
| <p>“Open Space Maintenance Sum”</p> | <p>shall mean the commuted sum of £4.59 (four pounds and 59 pence) per sqm per annum of Open Space (that comprises equipped play space) plus £0.62 (sixty two pence) per sqm per annum of Open Space (including any areas of Open Space that does not include equipped play space) payable to the District Council for a period of 10 (ten) years to spend on the maintenance and management of the Open Space in the event the Open Space is to be managed by the District Council or their nominee</p> |
| <p>“Open Space Plan”</p> | <p>a plan to be submitted to the District Council for approval indicating the location of the Open Space</p> |
| <p>"Open Space Specification"</p> | <p>means the specification for delivery of the Open Space including (1) the specifications plans and drawings showing but not limited to the layout and design of the Open Space, (2) the phasing and timing of the delivery of the Open Space including details of landscaping, paths, play equipment, the provision and location of dog bins urban gym trail facilities and access arrangements (3) the identity of the Nominated Body if already known or if not known to include an offer to transfer the Open Space to the District Council or such other body as the District Council may nominate and (4) details of the proposed future management regime for the Open Space in the event that such offer is not accepted and the Open Space is to be transferred to the Management Company</p> <p>to be agreed in writing with the District Council in accordance with Part 3 of the Second Schedule</p> |
| <p>“Open Space Transfer”</p> | <p>a transfer of the Open Space and which inter alia shall contain the following provisions:</p> |

a) The Owner shall transfer the fee simple estate free from encumbrances save for those set out in the title;

b) All easements and rights necessary in relation to access for the benefit of the Open Space;

c) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;

d) Restrictive covenants by the Nominated Body or the Nominated Bodies:

(i) Not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space as defined in this deed and shown on the Open Space Plan;

(ii) Not to use or permit the Open Space to be used in a manner which may be or become a nuisance annoyance, disturbance to the Development;

(e) A requirement that the Nominated Body's reasonable conveyancing fees and disbursements are paid by the Owner

"Plan"

the plan attached to this deed and numbered 2018-139/101 rev B

"Planning Permission"

the outline planning permission subject to conditions which may be granted by District Council pursuant to the Application a draft of which is attached hereto

"Play Equipment Contribution"

the sum of £200,000 (two hundred thousand pounds) towards the provision and/or management and maintenance of new play equipment within the Open Space and for the

| | | | | |
|--|---|--|--|---|
| | | | | avoidance of doubt could be used to provide a skate park or other forms of wheel play |
| | | | | issue of a certificate of practical completion by the Owner's architect or project manager or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect or project manager |
| | | | | means new indoor and outdoor facilities for the education and care of preschool children serving the Development and in the vicinity of Thurston |
| | | | | means new indoor and outdoor facilities for the education and/or care of children between the ages of 4 to 11 (both inclusive) including those with special educational needs in the vicinity of Thurston and serving the Development |
| | | | | the sum of £67,288 (sixty-seven thousand, two hundred and eighty-eight pounds) towards the total primary school land acquisition cost for the land to the north of Norton Road, Thurston |
| | "Priority Farmland Birds Mitigation Strategy" | | | a strategy which provides for the provision of mitigation measures to include: <ul style="list-style-type: none"> a) Evidenced number of Skylark nest plots b) Purpose and conservation objectives for the proposed Skylark nest plots c) Locations of the Skylark nest plots following Agri-Environment Scheme option AB4 Skylark Plots d) Locations of the Skylark plots in nearby agricultural land by appropriate maps and/or plans e) Details of persons responsible for implementing the compensation measures |
| | | | | means a promotion agreement relating to the Site dated 29 th October 2019 made between Jonathan Joseph Brown and Patricia Brown (1) and the Promoter (2) and a supplemental deed dated 1 June 2021 made between Jonathan |

Joseph Brown and Patricia Brown (1) Jonathan Joseph Brown, Patricia Brown and Stephen Joseph Brown (2) and the Promoter (3)

“Protected Tenant”

means any tenant who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

has exercised any statutory right to buy or preserved right to buy (or any contractual right) in respect of an Affordable Housing Unit; or

any person who has staircased the equity in their Shared Ownership Unit to 100%

“Registered Provider”

means a registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by HE pursuant to Chapter 3 of that Act or any other body who may lawfully provide or fund affordable housing from time to time

“RTA Purchaser”

shall mean a right to acquire purchaser pursuant to the provisions in the Housing and Regeneration Act 2008

“Shared Ownership”

dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in HE’s capital funding guide and ‘Shared Ownership Unit’ shall be construed accordingly

“Shared Ownership Lease”

a long lease (over 99 years) of an Affordable Housing Unit granted at a premium whereby no less than ten percent (10%) and no more than seventy percent (70%) on first purchase of the equitable interest in the Shared Ownership dwelling is paid by a lessee upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease

| | | |
|---|--|---|
| | | shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) of the legal and equitable interest in the Shared Ownership dwelling at some future date or dates |
| “Site” | | the land described in the First Schedule against which this deed may be enforced as shown edged red for identification purposes only on the Plan |
| “Station Platform Improvement Contribution” | | the sum of £30,000 (thirty thousand pounds) payable to the District Council towards a feasibility and design study for improvements to the platforms at Thurston Station |
| “Sustainable Transport Contribution” | | the sum of £50,000 (fifty thousand pounds) payable to the District Council towards a sustainable transport project in the event that the Car Club is not established as part of the Development |
| “Travel Plan Evaluation and Support Contribution” | | the sum of £1,000 (one thousand pounds) subject to BCIS Index per annum payable in accordance with part 3 of the Third Schedule of this Deed towards the monitoring and support by the County Council of the Travel Plan. |
| “Trigger” | | shall mean the date of Commencement and any trigger or threshold in this deed linked to the taking of specified steps or the prohibition of a specified action or payment of money |
| “Village Notice Boards” | | shall mean two new notice boards to be provided within the Site |
| “Working Days” | | Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England |

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this deed

- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that act or Directive 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 Directive or deriving validity from it
- 2.6 Any 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 District Council and the County Council any successors to its statutory functions
- 2.7 The headings and contents list are for reference only and shall not affect construction
- 2.8 References to a "Plan" or "Drawing" in this deed shall be reference to the plans attached to this deed bearing the relevant plan number or any amended plans as shall be agreed in writing between the Owner the District Council and the County Council
- 2.9 None of the covenants contained in this deed on the part of the Owner shall be enforceable against: -
- (a) those persons who purchase (including purchasers by way of long lease) any Dwelling for occupation by themselves or their lessees tenants or individuals of the Dwellings, nor against those deriving title from such owner-occupiers or their mortgagees or
 - (b) any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 2.10 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person
3. **LEGAL BASIS**
- 3.1 This deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers

3.2 The covenants, restrictions and requirements imposed upon the Owner under this deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council as appropriate as local planning authorities against the Owner or their successors in title

3.3 This deed is a deed and may be modified or discharged in part or in total at any time after the date of this deed by deed between the Parties in the form of a deed

3.4 This deed is a local land charge and upon completion shall be registered by the District Council as such

4. **CONDITIONALITY**

4.1 The obligations set out in the Second and Third Schedules are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of the Development

save for the provisions of Clauses 3.4, 8.3, 8.4, 8.8, 8.13, 8.14, 10, 16, 19, 19 and 20 and any other relevant provisions which shall come into effect immediately upon completion of this deed

4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings;

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission accepted by the Owner this deed will cease to have any further effect; and

4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this deed will apply in full.

4.3 Wherever in this deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used), the following provisions will apply:

(a) when permission to apply has been refused and no further application can be made;

(b) when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or

(c) when any appeal(s) is or are finally determined.

5. THE OWNER'S COVENANTS

5.1 The Owner hereby covenants with the District Council as set out in the Second Schedule so as to bind the Site and each and every part thereof

5.2 The Owner hereby covenants with the County Council as set out in the Third Schedule so as to bind the Site and every part thereof

6. THE DISTRICT COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS

6.1 The District Council hereby covenants with the Owner as set out in the Fourth Schedule

6.2 The County Council hereby covenants with the Owner as set out in the Fifth Schedule

7. PROMOTER'S CONSENT

7.1 The Promoter acknowledges and declares that it has entered into this Agreement with the consent of the Owner with intention that the Site shall be bound and subject to the terms of this Agreement and that it consents to this Agreement being entered into by the Owner

7.2 For the avoidance of doubt in the event that the Promoter acquires ownership of the Site (or part thereof) after the date of this Agreement the Promoter shall be a successor in title to the Owner and shall be bound by this Agreement as if references to the Owner were references to the Promoter in respect of the Site (or relevant part thereof)

8. MISCELLANEOUS

8.1 The Owner shall act in good faith and shall co-operate both with the District Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the

District Council and or the County Council and their duly authorised officers or agents to any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein

- 8.2 The Owner agrees declares and covenants both with the District Council and County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein
- 8.3 The Promoter agrees to pay to the District Council on completion of this deed the proper and reasonable legal costs of the District Council incurred in the negotiation preparation and execution and completion of this deed
- 8.4 The Promoter agrees to pay to the County Council on completion of this deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this deed
- 8.5 The Owner agrees to pay the County Council on completion of this agreement its monitoring fee to the value of £1,236.
- 8.6 No provisions of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.7 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or the County Council under the terms of this deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Chief Planning Officer or officer acting under his hand and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure or an officer acting under his hand and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 8.8 Following the performance and satisfaction of all the obligations contained in this deed the District Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this deed
- 8.9 Insofar as any clause or clauses or paragraphs 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
- 8.10 This deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires

prior to the Commencement of the Development and the District Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this deed

- 8.11 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 Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it
- 8.12 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
- 8.13 Nothing contained or implied in this deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as local authorities
- 8.14 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this deed are hereby waived unless the Planning Permission is modified by any statutory procedure without the consent of the Owner
- 8.15 The Owner covenants and warrants to the District Council and the County Council that they have full power to enter into this deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this deed binding on the Site and all estates and interests therein
- 8.16 Unless otherwise agreed in writing by the Council and the Owner in the event that the Owner (or any successor in title) obtains planning permission pursuant to an application under section 73 of the Act to vary any condition of the Planning Permission then this deed shall be binding upon any planning permission granted pursuant to such application as if it were the Planning Permission

9. **WAIVER**

No waiver (whether expressed or implied) by the District Council the County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the District Council County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

10. **CHANGE IN OWNERSHIP**

The Owner agrees with the District Council and the County Council to give each of them independently written notice of any transfer in ownership of its freehold interest