

DATED

2017

and

and

and

SWINDON BOROUGH COUNCIL

A G R E E M E N T

in respect of

Swindon

Civic Offices
Euclid Street
Swindon
SN1 2JH

/ /

SUBMISSION OF ANY DRAFT AGREEMENT DOES NOT EVIDENCE AN INTENTION ON THE PART OF THE COUNCIL TO ENTER INTO AN AGREEMENT ON THE TERMS CONTAINED THEREIN OR AT ALL

THIS AGREEMENT is made the day of 2017

BETWEEN

1. ("the Owner")
2. ("the Developer")
3. ("the Bondsman")
4. SWNDON BOROUGH COUNCIL of Civic Offices in the Town of Swindon ("the Council")

WHEREAS:

(1) The Owner is [the Registered Proprietor of the Land with freehold Title Absolute under Title Number GR at H.M. Land Registry] [seised in fee simple absolute in possession] subject only to [the entries on the registers therein][]

(2) [By the Contract the Developer agreed to purchase the Land from the Owner upon the terms and conditions therein mentioned]

(3) [By the Legal Charge the Owner charged the Land to the Chargee to secure repayment to the Chargee of the monies therein mentioned]

(4) The Owner proposes to carry out the Development on the Land

(5) The Council is

(a) a Local Planning Authority as defined in the Act and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act and

(b) the Highway Authority for Swindon and is of the opinion that the Travel Plan Contribution is necessary to address the consequences of the development

(c) satisfied that entry into this Agreement is of benefit to the public

NOW THIS DEED WITNESSETH as follows:

Definitions and Interpretation

1.(a) It is hereby agreed by the parties that in this Agreement the following expressions shall have the following meanings:

'the Act' means the Town and Country Planning Act 1990 and any amendment thereof

'the Application' means an application made to Council and registered under number

'Commencement Date'	means the date which any material operation as defined in Section 56 of the Act, comprised in the Development shall commence to be carried out
['the Contract'	means a contract made between the Owner (1) and the Developer (2)]
'the Development'	means development of the Land in accordance with (or largely in accordance with) the Permission
'the Director'	means the Board Director: Service Delivery or such other Chief Officer as shall from time to time be responsible for the highway and transportation function of the Council
'First Occupied'	means the date when a Residential Unit becomes liable for Council Tax or any replacement thereof and 'First Occupation' shall be construed accordingly
'the Land'	means the land situate at Swindon and shown for the purposes of identification only edged red on the Plan
['the Legal Charge'	means a charge made the between the Owner (1) and the Chargee (2)]
'Modal Share Target'	means the target modal share in the Travel Plan
'the Permission'	means planning consent granted pursuant to the Application
'the Plan'	means the plan annexed hereto
'Residential Unit'	means a dwelling built as part of the Development
'the Travel Plan'	means a plan to deliver a modal shift away from the private car in favour of public transport and other means of travel including cycling and walking and drawn up in accordance with the Travel Plan Framework as approved in writing by the Director in accordance with Clause 4(b) hereof and the definition includes any amendment or variation of the same pursuant to the provisions of this Agreement
'the Travel Plan Deposit'	means the sum of pounds (£)
'Travel Plan Co-ordinator'	means a person or organisation appointed at the expense of the Owner and approved in writing by the Council to coordinate and implement the Travel Plan
'the Travel Plan'	means as set out in the First Schedule Framework" hereto

(b) The Development shall be deemed to be commenced on the Commencement Date

(c) Where the context so admits

(i) words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa [and where there is more than one covenantor all obligations of such covenantors shall be joint and several]

(ii) where reference is made to a statutory provision this includes all prior and subsequent enactments amendments and modifications relating to that provision and any sub-ordinate legislation made under it

(d) The expressions "the Council" "the Owner" "the Developer" "the Chargee" and "the Bondsman" shall include their respective successors in title and assigns

(e) All headings in this Agreement are for ease of reference only and are not part of the Agreement nor are they intended to be used as a guide to its interpretation

(f) All payments in accordance with the terms of this Agreement shall be exclusive of any VAT payable in respect thereof

Statutory Provisions

2. The Owner the Developer and the Council hereby agree that

(a) the obligations on the part of the Owner hereinafter contained are planning obligations imposed pursuant to the provisions of Section 106 of the Act which are enforceable by the Council and

(b) inter alia this is an Agreement pursuant to Section 278 of the Highways Act 1980

[Contract

3.(a) The Owner hereby agrees with the Council that it concurs with the undertaking by the Developer of the obligations herein contained to the intent that [the Land] shall be subject in all respects to the terms conditions and obligations hereof

(b) The Developer hereby agrees with the Council that its rights under the Contract shall be subject in all respects to the terms and conditions hereof and concurs with the giving by the Owner of the covenants and obligations on its part herein contained]

[Legal Charge

4. the Chargee hereby concurs with the giving by the [Developer][Owner] of the obligations in relation to the Land herein contained to the intent that the security created by the Legal Charge shall be subject in all respects to the terms conditions and obligations hereof]

The Travel Plan

5. The parties hereby agree and covenant with the other that:

(a) prior to First Occupation the Owner will submit to the Director the Travel Plan for his written approval (such approval not to be unreasonably withheld or delayed) to include the Travel Plan Targets and set at intervals of:-

- (aa) three years;
- (bb) five years; and
- (cc) ten years

all timed from the date on which the Sixtieth Residential Unit is First Occupied

(b) the Director shall provide his written comments on the documents submitted in accordance with sub-clause (a) of this Clause within 28 days of receipt of the same and confirm in so doing that it is approved (with or without amendment) or

- not approved and in the absence of a response in that period the document in question shall be deemed approved
- (c) prior to the First Occupation the Owner shall appoint the Travel Plan Co-ordinator and provide the name and contact details of the appointed person to the Council in writing within seven (7) days of such appointment
 - (d) within one calendar month of a change of the Travel Plan Co-ordinator the Owner shall notify the Council in writing of that change and provide the Council with the name and contact details of the new Travel Plan Co-ordinator
 - (e) the Owner shall not occupy or allow or permit the occupation of any part of the Development prior to the implementation of those measures identified in the Travel Plan as capable of being implemented at that time (at the absolute discretion of the Director)
 - (f) (without prejudice to Clause 3(e) hereof) the Owner shall fully implement the measures identified in the Travel Plan in accordance with the Implementation Timetable contained therein and shall maintain the same for as long as any part of the Development is occupied
 - (g) the Owner shall use all reasonable endeavours (including funding of the Travel Plan) to achieve the Modal Share Target
 - (h) the Owner shall implement monitor and review the Travel Plan at its own cost in accordance with the monitoring strategy as approved
 - (i) the Council hereby agrees with the Owner that within twenty eight (28) days of receiving (to the Director's satisfaction) such evidence as the Director shall reasonably require of the achievement of each of the Travel Plan Targets the Director will repay to the Owner a proportion of the Residential Travel Plan Deposit calculated in accordance with the table set out in the Second Schedule hereto together with interest on the amount repaid at the Public Works Loan Board 2 to 3 year rate from time to time in force such rate being calculated on a daily basis from the date of payment until the date of repayment (net of tax if such deduction is required by the guidance in respect thereof issued by Her Majesty's Government at the date of such refund)

Costs

5. The Owner hereby agrees with the Council that it will upon the execution hereof pay

- (a) the Council's legal charges in the sum of (£) and
- (b) the Council's technical charges in the sum of (£)
- (c) the Travel Plan Deposit

Notices

6. Any notice to the Owner under this Agreement shall be in writing signed by the Director of Law and Administration for the time being of the Council unless otherwise herein provided and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post in the case of the Owner at its registered office and in the case of the Owner at the address stated at the beginning of this Agreement and any notice to the Council under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Director of Law and Administration Swindon Borough Council Euclid Street Swindon.

Non-Waiver

7. It is hereby agreed by the parties hereto that failure by the Council or the Director at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Owner of any of the conditions covenants agreements or obligations of this Agreement or

any failure or delay by the Council or the Director to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision

General

8. The parties hereby agree that

- (a) this Agreement constitutes the entire agreement between the parties in respect of the Permission and
- (b) this Agreement supersedes and replaces all previous negotiations whether oral or written and
- (c) none of the parties has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another and no collateral agreement exists between the parties and
- (d) nothing herein contained excludes the liability of any of the parties in relation to fraud

Consent to Registration and SDLT

9. The Owner hereby consents to the registration of this Deed as a Local Land Charge and a Notice on Title Number GR

10. Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required and thus the Council hereby certifies that a Land Transaction Return is not applicable in accordance with Section 79(3) of the Finance Act 2003 Contract (Rights of Third Parties) Act 1999

11. It is not intended that any third party shall have a right to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit and nor shall any such third party have a right of veto over any future variations of this Agreement

Effect of invalidity illegality or enforceability

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

Warranty

13. The Owner hereby warrants to the Borough Council that they have not leased mortgaged charged or otherwise created any interest in the Land at the date of this Agreement

IN WITNESS whereof the parties hereto have caused this Deed to be executed the day and year first before written

THE COMMON SEAL of

was hereunto affixed

in the presence of:-

Director

Director

THE COMMON SEAL of
LIMITED

was hereunto affixed

in the presence of:-

Director

Director

THE COMMON SEAL of

was hereunto affixed

in the presence of:-

Director

Director

THE COMMON SEAL of
SWINDON BOROUGH COUNCIL

was hereunto affixed

in the presence of:-

Director of Law and Administration