

**Section 106 Agreement relating to Land at Hanslope Site, Long Street
Road, Hanslope**

Dated

19th December

2017

THE COUNCIL OF THE BOROUGH OF MILTON KEYNES

and

JOHN WAKEFIELD ADAMS

Planning Reference: 16/02937/OUT

Legal Reference: PE-016917-EG

Appeal Reference: APP/Y0435/W/17/3177851

This Agreement

Dated

19th December

2017

Between

- (1) **THE COUNCIL OF THE BOROUGH MILTON KEYNES** of Civic Offices, 1 Saxon Gate East, Central Milton Keynes, MK9 3EJ (the **Council**); and
- (2) **JOHN WAKEFIELD ADAMS** of Chantry Farm, Hanslope, Milton Keynes, MK19 7HL (the **Owner**)

Together known as the **Parties and Party** shall be construed accordingly.

RECITALS

- A. The Council is the Local Planning Authority for the purposes of the Act for Milton Keynes area within which the Land is situated
- B. The Owner is the freehold Owner of the Land registered at the Land Registry with title absolute under title number BM410348
- C. On 13 October 2016 the Owner submitted the Planning Application to the Council
- D. On 6 April 2017 the Council's Development Control Committee refused planning permission in respect of the Planning Application and the Owner has subsequently submitted the Appeal for determination by the Secretary of State
- E. The obligations contained in Schedule 3 are planning obligations within the meaning of section 106 of the Act and shall bind the Application Site and shall be enforceable by the Council to whom the obligations are made in accordance with the provisions of this Agreement.
- F. The Council is satisfied that the provisions of this Agreement and the obligations contained in Schedule 3 comply with its policy in relation to Section 106 of the Act and Regulation 122 of the Community Infrastructure Levy Regulations 2010 and are sufficient in respect thereof.
- G. The Council considers that the obligations contained in Schedule 3 are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.

It is agreed

1 Definitions and Interpretation

1.1 Wherever the context so permits in this Agreement the following shall have the following meanings:

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

Affordable Housing means housing provided whereby the sale price or rental is lower than the prevailing market prices or rents for similar housing in the Borough of Milton Keynes to be made available to people who because of their low incomes cannot afford to buy or rent dwellings appropriate for their needs generally available on the open market

Affordable Housing Mix means the mix of affordable housing to be provided by the Developer representing thirty per cent (30%) of the Residential Units

Affordable Housing Tenures means the following mix of tenures to be provided by the Developer as part of the Affordable Housing Mix (unless otherwise approved by the Council in writing):

25% Affordable Rent Housing (of which 5% of the Development or one fifth of the Affordable Rent Housing Units are to be let at a level broadly equivalent to Social Rent Housing); and

5% Shared Ownership Housing

Affordable Housing Units means the units of Affordable Housing to be constructed on the Application Site provided in accordance with Affordable Housing Mix and the Affordable Housing Tenures (~~unless otherwise approved by the Council in writing~~) and **Affordable Housing Unit** shall be construed accordingly

Affordable Rent Housing means Affordable Housing Unit(s) made available for rent by an Registered Provider at a level of no more than eighty per cent (80%) of the average **Open Market Rent** (including service charge) and **Affordable Rent Housing Units** shall be construed accordingly

Agreement means this deed of agreement entered into pursuant to section 106 of the Act

Allotments Contribution means the sum of thirteen thousand two hundred and eighteen pounds and seventy five pence (£13,218.75) Index Linked payable to the Council to facilitate the creation of additional allotment plots at the existing allotments on Newport Road in Hanslope which may include rationalising existing space and providing enhancements to provide additional plots, improving water supplies, parking and fencing to enable the residents of the Development to access allotment facilities

Appeal means the appeal to the Secretary of State following the refusal of the Planning Application by the Council given appeal reference APP/Y0435/W/17/3177851

Application Site means the site of the Development as described in Schedule 1 and shown edged red on the Plan

BCIS Index means the All in Tender Price Index published by the Building Costs Information Services of the Royal Institute of Chartered Surveyors or such similar index as may from time to time be published to replace such index

Burial Grounds/Crematorium Contribution means the sum of twelve thousand nine hundred fifteen pounds and sixty pence (£12,915.60) Index Linked payable to the Council towards expanding burial facilities in Hanslope to serve the Development and the increase in population and/or providing additional plot capacity at the Milton Keynes Crematorium to provide additional capacity for the anticipated growth this Development will bring.

Bus Voucher means the provision at cost of a single voucher for each Residential Unit entitling the first occupier of that Residential Unit to apply for an all services bus pass valid within the Borough of Milton Keynes for a period of one (1) year from the date of issue

Carbon Neutrality Contribution means the estimated sum of seventy thousand and five hundred pounds (£70,500.00) to be paid to the Council to be used towards offsetting the carbon anticipated to be emitted by the Development and to be used to provide carbon reduction measures in the Borough of Milton Keynes in accordance with the Council's Sustainable Construction Supplementary Planning Document (2007) and Milton Keynes Local Plan (2001-2011) Policy D4 and calculated at a rate of two hundred pounds (£200) Index Linked per tonne of carbon dioxide anticipated to be produced by the Development in one year (to include but not limited to all energy use for space heating and cooling, hot water, lights, appliances and processes but not including embodied energy and transport) and calculated in accordance with the provisions in this Agreement

Charging Schedule means a charging schedule as detailed in Regulation 2(1) of the CIL Regulations

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

Community Hall Contribution means the sum of thirty two thousand seven hundred and thirty seven pounds and thirty eight pence (£32,737.38) Index Linked payable to the Council towards providing improvements to enable further expansion and other enhancement works to the Hanslope Pavilion to ensure there are sufficient community facilities within Hanslope to accommodate the population growth and to meet the demands of the new residents as a result of the Development

Contributions means together the Allotments Contribution, the Burial Grounds/Crematorium Contribution, the Community Hall Contribution, the Early Years Education Contribution, the Emergency Services Contribution, the Health Facilities Contribution, the Inward Investment and Skills Contribution, the Library and Adult Continuing Education Contribution, the Museums and Archives Contribution, the Neighbourhood Play Contribution, the Playing Fields Contribution, the Primary Pupils Contribution, the Secondary School and Post 16 Pupils Contribution, the Sports Hall Contribution, the Village Amenities Contribution, the Voluntary Sector Contribution, the Waste Management Contribution and the Waste Receptacles Contribution

Complete means structurally complete save in minor respects and ready for Occupation and **Completed** and **Completion** shall be construed accordingly

Decision Letter means the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed

Development means the development of the Application Site pursuant to the Planning Permission as set out in Schedule 2

Early Years Education Contribution means the sum of ninety nine thousand eight hundred and ninety two pounds and ten pence (£99,892.10) Index Linked calculated in accordance with the Council's Education Facilities SPG towards Early Years provision in Hanslope to aid in offsetting the impact of the Development as a result of the anticipated significant increase in demand for the early years education by expanding place provision in conjunction with an early years provider based in Hanslope

Emergency Services Contribution means the sum of seven thousand one hundred and three pounds and fifty eight pence (£7,103.58) Index Linked as a contribution towards the provision of additional emergency services facilities covering the Hanslope area to mitigate the direct impact of the Development and to ensure emergency services have the capacity to accommodate the growth in population as a result of the Development

Feoffee Estate Charity means Feoffee Estate Charity whose address is at 5 Keswick Road, Hanslope, Milton Keynes, MK19 7NX (Charity Number 207176) and which provides financial support primarily to educational needs in the village of Hanslope

First Occupation means first occupation for residential purposes (but shall exclude occupation for fitting out and marketing purposes) of a Residential Unit of the Development or part of the Development and **First Occupy** and **First Occupied** shall be construed accordingly

Health Facilities Contribution means a sum of two hundred and twenty one thousand one hundred and seventy nine pounds and sixty five pence (£221,179.65) Index Linked towards the provision of extensions, enhancements and/or improvements to the existing doctor's surgery in Hanslope, the relocation of the existing Hanslope doctor's surgery, revenue support for providing additional health staff and/or for towards the first phase of the new acute assessment unit at Milton Keynes Hospital to serve the additional demand as a result of the Development

Highways Agreement means an agreement with the Council under section 278 of the Highways Act 1980 and such other legislative provisions as may be applicable in relation to Highway Works

Highway Works means (unless approved otherwise by the Council in writing):

- (i) Provision of a priority 'T' junction at Castlethorpe Road/Long Street Road/Gold Street junction;
- (ii) Undertaking improvement works to Forest Road/Hartwell Road junction to facilitate the provision of change in priority to the junction to improve traffic flow;

- (iii) Provision of mitigating traffic calming measures along Long Street Road; and
- (iv) Undertaking improvement works to the existing right of ways to the pedestrian link through the Application Site to the village centre to the south of the Development and to the existing footway at the junction at Williams Close and Long Street Road.

Implementation means implementation of the Planning Permission by the carrying out of any material operation within the meaning of sections 56(2) and (4) of the Act provided that for the avoidance of doubt the demolition of existing buildings and structures, site clearance and preparation, termination or diversion and/or laying of services, temporary construction including the erection of any temporary means of enclosure, site preparation, investigation work, decontamination works or any other remedial work in respect of any other adverse ground conditions, the temporary display of site notices or advertisements and any other preparatory works as may be agreed in writing with the Council (such other preparatory works but not any of the other works listed in this definition) shall not constitute a material operation and **Implement** and **Implemented** shall be construed accordingly

Index Linked means the recalculation of any financial contribution or component part to be made by the Owner under this Agreement by applying the following formula and **Indexation** shall be construed accordingly

$(A \times B/C) + (D \times E/F) = G$ Where:

A = 50% of the payment specified in this Agreement

B = the figure shown in the Retail Price Index for the period last published immediately prior to the due date for payment of such sum under the provisions of this Agreement

C = the figure shown in the Retail Price Index for the period last published immediately prior to the date of this Agreement.

D = 50% of the payment specified in this Agreement

E = the figure shown in the BCIS Index for the period last published immediately prior to the due date for payment of such sum under the provisions of this Agreement

F = the figure shown in the BCIS Index for the period last published immediately prior to the date of this Agreement.

G = the recalculated sum payable under this Agreement

Inward Investment and Skills Contribution means the sum of one hundred and sixty four thousand nine hundred and ninety six pounds and seventy nine pence (£164,996.79) Index Linked towards the provision of inward investment and skills initiatives to promote the creation of employment opportunities in Milton Keynes to ensure housing growth and employment growth occur to create sustainable communities in line with the Milton Keynes Core Strategy, including investment in MK College and University projects as well as local projects within Hanslope which may offer courses and further development and up-skilling opportunities for the residents of the Development

Library and Adult Continuing Education Contribution means the sum of forty seven thousand one hundred and forty one pounds and ninety four pence (£47,141.94) Index Linked payable to the Council towards providing additional library facilities in Hanslope including provision of either a static or the mobile library and also used towards a revenue based contribution to other libraries serving the Development including Wolverton and Milton Keynes Libraries

Locally Equipped Area of Play means the provision of a play facility within the Application Site

Locally Equipped Area of Play Specification means the specification for the Locally Equipped Area of Play provided in accordance with the Fields In Trust Guidance "Beyond the Six Acre Standard" 2015 and the Council's Policy L3 of the Local Plan and the Leisure Recreation and Sports Supplementary Planning Guidance (or such policy which may from time to time replace these)

Maintenance Period means the period of twelve (12) months from the notification of the date of Practical Completion of the relevant area of Public Open Space by the Owner to the Council pursuant to paragraph 7.7 of Schedule 3 during which time the Developer will maintain the relevant area of Public Open Space at their expense

Market Dwelling means Residential Unit to be constructed as part of the Development which is not Affordable Housing and **Market Dwellings** shall be construed accordingly

Monitoring Fee means the sum of thirteen thousand and one hundred and fifty pounds (£13,150) payable to the Council in accordance with the terms of this Agreement for the purposes of monitoring compliance with the obligations contained herein

Museums and Archives Contribution means the sum of twenty two thousand six hundred and two pounds and thirty pence (£22,602.30) Index Linked payable to the Council to be spent in accordance with the Heritage, Museums and Archives Strategy 2014-2023 and specifically towards local heritage projects to be identified by Hanslope Parish Council, the local community and Milton Keynes Council within the vicinity of the Development

Neighbourhood Play Contribution means the sum of one hundred and five thousand seven hundred and fifty pounds (£105,750.00) Index Linked towards the provision and maintenance of neighbourhood play facilities within the immediate vicinity of the application site, including at the recreation ground which may include the provision of multi-use games area(s) and other play facilities aimed at older children and/or enhancements at the Hanslope Pavilion to enhance the existing and to provide additional MUGA space in consultation with the residents of Hanslope

Occupation means occupation of the Development (including causing or permitting occupation of the Development) for use in accordance with the Planning Permission which excludes occupation for the purposes of fit out or marketing and **Occupy** and **Occupied** shall be construed accordingly

Open Market Rent means the estimated rent for which the premises would let on the date of valuation between a willing landlord and a willing tenant in an arms length transaction after

proper marketing in which the parties had each acted knowledgeably prudently and without compulsion

Phase means a phase or part of a phase of the Development and **Phased** shall be construed accordingly

Plan means the plan annexed to this Agreement at Schedule 1

Planning Application means the planning application submitted for planning permission for the Development by the Owner to the Council on the 13 October 2016 and given planning reference 16/02937/OUT

Planning Inspector means a planning inspector appointed by the Secretary of State for the purpose of determining the Appeal

Planning Permission means the outline planning permission to be granted pursuant to the Planning Application

Playing Fields Contribution means the sum of one hundred and thirty seven thousand six hundred and thirty three pounds and sixty three pence (£137,633.63) Index Linked payable to the Council towards enhancements and maintenance at the existing playing fields and Hanslope Pavilion on Castlethorpe Road or an alternative location within Hanslope, which may include works to the drainage to facilitate more usage all year-round, car parking extensions and the provision of enhanced changing facilities to support additional users as well as laying out additional pitches and providing additional ancillary equipment

Practical Completion means the point at which construction work for the relevant area of Public Open Space is complete, except for minor defects which can be rectified without undue interference or disturbance to the operation of the relevant area of Public Open Space and which is capable of beneficial use and safe for its intended purpose and **Practically Completed** shall be construed accordingly.

Primary Pupils Contribution means the sum of four hundred and ninety three thousand five hundred and eighty four pounds forty nine pence (£493,584.49) Index Linked payable to the Council to provide sufficient primary school places provision at Hanslope Primary School to ensure sufficient provision in the area and to offset the impact from the Development.

Public Art Appeal Contribution means the sum of seventy thousand five hundred pounds (£70,500) payable to the Council to be spent in accordance with the Arts and Public Art Strategy specifically on a public art project within the Application Site within the immediate vicinity of the Development in accordance with saved Policy PO4 of the Local Plan and the Social Infrastructure SPD AND FOR THE AVOIDANCE OF DOUBT is only payable in the event that clause 3.2.3 applies

Public Art Contribution means the sum of thirty five thousand two hundred and fifty pounds (£35,250) payable to the Council to be spent in accordance with the Arts and Public Art Strategy specifically on a public art project within the Application Site within the immediate vicinity of the Development in accordance with saved Policy PO4 of the Local Plan and the

Social Infrastructure SPD AND FOR THE AVOIDANCE OF DOUBT will not be payable in the event that clause 3.2.3 applies

Public Open Space means the provision of areas of open spaces within the Development including the Locally Equipped Area of Play to be laid out in accordance with the Public Open Space Specification and Locally Equipped Area of Play Specification and the approved Reserved Matters.

Public Open Space Maintenance Contribution means a contribution towards the ongoing maintenance of the Public Open Space to be calculated in accordance with the provisions of this Agreement as set out in Schedule 5.

Public Open Space Specification means a specification for the Public Open Space to be laid out within the Development setting out the area, location and landscaping details and in accordance with the provisions of this Agreement such specifications to be designed in accordance with Policy L3 of the Local Plan and the Leisure Recreation and Sports Supplementary Planning Guidance (or such policy which may from time to time replace these)

Registered Provider means a registered provider of social housing registered with the Homes and Communities Agency or any successor authority as referred to in the Housing and Regeneration Act 2008 or, if there is any statutory modification or change to such legislation, any landlord providing social housing whose status and functions are similar to such a Registered Provider, as may be agreed between the Council and the Owner

Relevant Agreement means an agreement to secure planning obligations under Section 106 of the Act and which relates to planning permission granted for development where such agreement has been entered into on or after 6 April 2010 and Relevant Agreements shall be construed accordingly

Relevant Date means the date prescribed by paragraph (b) of the definition of 'relevant determination' in Regulation 123(4) of the CIL Regulations in respect of a determination of an application for planning permission being 6 April 2015 or any other date as may be prescribed in Regulation 123(4) of the CIL Regulations or by the Secretary of State as the case may be

Reserved Matters means those matters in respect of which details have not been given in the Planning Application and are reserved for future decision by the Council

Residential Unit means a unit of residential accommodation (whether house or flat or otherwise and whether an Affordable Housing Unit or Market Dwelling) constructed as part of the Development and **Residential Units** shall be construed accordingly

Retail Price Index means the index published by the Office for National Statistics for Retail Prices or such similar index as may from time to time be published to replace such index

Secondary School and Post 16 Pupils Contribution means a sum of six hundred and forty six thousand four hundred and seventy pounds and ninety pence (£646,470.90) Index Linked payable to the Council to offset the impact of the Development caused to the

Radcliffe Secondary School arising from the increased demand on pupil places towards the future expansion project (3 forms or entry) of The Radcliffe School (subject to consultation and planning permission) or such alternative secondary school serving the catchment area within which the Development is located

Secretary of State means the Secretary of State for Local Government and Communities or any other minister charged with performing the functions of the secretary of state under the Act

Shared Ownership Housing means Affordable Housing Units provided by a Registered Provider in which the occupier initially owns a percentage ranging between twenty five percent (25%) and seventy five percent (75%) and the remainder is owned by the Registered Provider in respect of which the occupier pays rent with the option for the occupier to increase the percentage of their ownership through a process of staircasing up to outright ownership and Shared Ownership Housing Unit shall be construed accordingly

Sports Hall Contribution means the sum of sixteen thousand four hundred and thirty five pounds and forty four pence (£16,435.44) Index Linked to be used towards enhancements to the pavilion located at Hanslope recreation ground to improve the facilities including changing facilities and indoor facilities to accommodate additional usage as a result of the Development

Statutory Undertaker means a statutory undertaker as defined by section 262 of the Act

Travel Information Pack means the provision of an information pack which provides the occupiers of the Development with information about the bus services which serve the Development including information on timetable, routes and destinations and frequencies and to include the application form for the Bus Voucher

Village Amenities Contribution means the sum of thirty five thousand two hundred and fifty pounds (£35,250) Index Linked payable to the Council towards physical and social improvements which may include local projects to mitigate the impact of this Development in Hanslope and may include (but not limited to) the provision of benches and street furniture sited around the village, signage and additional traffic calming measures as determined appropriate by the Hanslope Parish Council in conjunction with the Council's Highways Department or other community project(s) that would provide additional facilities to help accommodate the impact of the Development and benefit the users of the Development

Voluntary Sector Contribution means the sum of twenty six thousand seven hundred and ninety nine pounds and eighty seven pence (£26,799.87) Index Linked payable to the Council a proportion to be paid to the Feoffee Estate Charity and to be used towards investing in community development work with residents of the Development and providing a grant pot for supporting local activity and to support local voluntary and community activities to help the new residents integrate into the existing community

Waste Management Contribution means the sum of thirty six thousand four hundred and eighty six pounds and fifty seven pence (£36,486.57) Index Linked payable to the Council towards waste management projects required to deal with the waste arising from the

Development including the provision of a civic recycling supersite centre and associated land acquisition and/or with the expansion of waste education provision to encourage the reduction of waste being created by the Development

Waste Receptacles Contribution means the sum of fourteen thousand and one hundred pounds (£14,100.00) Index Linked payable to the Council towards the provision of all necessary receptacles to promote on site recycling and funding the provision of all necessary waste receptacles including bins, sacks and caddies

Working Day means any days from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday and **Working Days** shall be construed accordingly

- 1.2 Any covenant by the Parties not to do any 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 where the Party is aware of the actions of the other person and controls them.
- 1.3 References to any statute include any statutory extension, modification, amendment or re-enactment of such statute and any subordinate instruments, regulations or orders made pursuant to it.
- 1.4 Any notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction required to be given, reached or taken by any Party under this Agreement or any response requested to any such notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction shall not be unreasonable or unreasonably withheld or delayed.
- 1.5 The headings in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 1.6 Where reference is made to a clause, paragraph, recital or schedule such reference (unless the context otherwise requires) is a reference to a clause, paragraph, recital or schedule in this Agreement.
- 1.7 In this Agreement the singular includes the plural and vice versa and the masculine includes the feminine and vice versa.
- 1.8 References in this Agreement to the Parties include each Party's respective statutory successors or successors in title and assigns (except where the contrary is expressly provided).

1.9 Any covenants given by two or more of the Parties are given jointly and severally.

2 Statutory Authorities

2.1 It is hereby declared that the obligations on the part of the Owner are entered into with the intent that the same shall be enforceable against the Owner without limit of time provided that the Owner shall not be liable to the Council for a breach of an obligation relating to any part of the Application Site which occurs once it has parted with all interest relating to that part of the Application Site but without prejudice to liability for any subsisting breach occurring prior to parting with such interest.

2.2 This Deed is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 2 of the Local Government Act 2000.

2.3 The obligations contained in Schedule 3 are planning obligations for the purposes of section 106 of the Act and shall bind the Application Site and shall be enforceable by the Council to whom the obligations are made in accordance with the provisions of this Agreement.

3 Conditional upon Implementation

It is hereby agreed and declared that:

3.1 With the exception of this clause 3 and clause 9 which shall have effect on the date hereof, and paragraph 2.1, 3.1, 6.1 and 7.1 of Schedule 3 which shall have effect prior to Implementation of the Planning Permission, no part of this Agreement shall be effective and enforceable until:

3.1.1 the Planning Permission has been granted; and

3.1.2 the Planning Permission has been Implemented.

3.2 If in determining the Appeal the Secretary of State or the Planning Inspector:

3.2.1 Expressly states in the Decision Letter that any section 106 obligation contained in this deed:

(a) is not a material planning consideration; or

(b) can be given no or little weight in determining the Appeal; or

- (c) does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations; or
- (d) requires funding or provision towards a project or towards a type of Infrastructure where the Council has, following the Relevant Date, entered into five (5) or more Relevant Agreements which provide for the funding or provision towards the same project or towards that type of Infrastructure,

then such section 106 obligation shall not be enforceable pursuant to this deed and shall cease to have effect.

3.2.2 Notwithstanding clause 3.2.1 above, if in determining the Appeal the Secretary of State or the Planning Inspector determines that the obligation to pay the Village Amenities Contribution does not comply with clause 3.2.1(c) above, the obligation to pay the Village Amenities Contribution shall not be enforceable pursuant to this deed and the obligation to pay the Village Amenities Contribution shall cease to have effect.

3.2.3 In the event that clause 3.2.2 above applies, the obligation to pay the Public Art Contribution shall not be enforceable pursuant to this deed and the obligation to pay the Public Art Contribution shall cease to have effect and the obligation to pay the Public Art Contribution shall be replaced by an obligation to pay the Public Art Appeal Contribution which shall be payable in accordance with the provisions of paragraph 8 of Schedule 3 of this Agreement AND FOR THE AVOIDANCE OF DOUBT references to the Public Art Contribution in paragraph 8 of Schedule 3 of this Agreement shall be read as references the Public Art Appeal Contribution.

3.3 In the event that the Secretary of State or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission a Charging Schedule has been approved by the Council and has come into effect any contribution payable under the terms of this deed which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable.

3.4 If the Planning Permission shall expire prior to being Implemented or shall at any time be quashed or revoked or modified without the consent of the Owner this Agreement shall forthwith determine and cease to have effect with the exception of this clause 3 and on receiving a written request from the Owner the Council shall ensure that any

entry referring to this Agreement in the Register of Local Land Charges shall be forthwith removed.

- 3.5 The Council hereby covenants with the Owner that it will upon reasonable written request and subject to payment of its reasonable and proper professional costs and charges in connection with certification certify within twenty (20) Working Days of such written request compliance or partial compliance (as appropriate) with the provisions of this Agreement as so requested by the Owner and will execute such release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Register of Local Land Charges maintained by the Council.

4 Obligations

- 4.1 The Owner covenants with the Council as set out in Schedule 3.
- 4.2 The Council covenants with the Owner as set out in Schedule 4.
- 4.3 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

5 General Provisions

It is hereby agreed and declared that:

- 5.1 The covenants on behalf of the Owner contained in this Agreement shall be treated as local land charges and shall be registered by the Council as such.
- 5.2 The covenants on the part of the Owner contained in this Agreement shall not be enforceable against owners, occupiers or tenants of individual Residential Units nor those deriving title from them nor their mortgagees or chargees nor against the Registered Provider nor their mortgagees or chargees (other than, subject to paragraph 1.2.1, the obligations in paragraph 1 of Schedule 3) nor against Statutory Undertakers in relation to any parts of the Application Site in relation to which they take an interest and/or acquired by them for the purposes of carrying on their undertaking nor against a person benefitting only from an easement or licence in relation to the Application Site except in so far as a restriction is to be complied with before the Development or a relevant part of it is Occupied.

- 5.3 Nothing in this Agreement shall be construed as prohibiting limiting or affecting any right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted by the Council or the Secretary of State on appeal or by reference to him after the date of this Agreement and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Implementation under the terms of this Agreement.
- 5.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 5.5 If the Parties shall so agree in writing in relation to any planning permission granted as a result of any application under Section 73 of the Act affecting the Planning Permission the Parties shall comply with the terms of this Agreement as if the definition of the Planning Permission in this Agreement had been replaced by the description of the said planning permission granted as a result of any application under Section 73 of the Act affecting the Planning Permission with the intention that the provisions of this Agreement will apply as if the definition of the Planning permission in this Agreement were the new planning permission granted as a result of such application.

6 Interest

- 6.1 If any payment of any sum referred to in this Agreement shall have become due but shall remain unpaid for a period exceeding thirty (30) days after becoming due and payable the Owner shall pay on demand to the Council interest thereon at the interest rate of four per cent (4%) per annum above the base lending rate of the National Westminster Bank Plc from time to time from the date when the same became due until payment thereof.

7 Resolution of Disputes

- 7.1 In the event of any dispute between any of the parties in relation to the obligations contained in this Agreement (other than disputes relating to a matter of law or policy) the parties to the dispute agree that the matter will on the application of any party to the dispute be referred to an expert being a person with not less than ten (10) years recent and relevant experience of the matter whose identity will be agreed between the parties to the dispute or in default of agreement appointed by or on behalf of the

President or Vice President for the time being of the Royal Institution of Chartered Surveyors on the application of any party to the dispute (the "Expert") and it is further agreed that:

- 7.1.1 the Expert shall be required to issue his decision as soon as reasonably practicable;
- 7.1.2 the determination of the Expert will be final and binding on the parties to the dispute save in the case of manifest error;
- 7.1.3 without prejudice to 7.1.1 above nothing in this clause 7 shall prevent the Implementation or continuance of Implementation pending the decision of the Expert provided that the parties to the dispute accept that any action undertaken after a dispute occurs shall be carried out entirely at its own risk;
- 7.1.4 the parties to the dispute will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct but which timetable shall be required by the parties to the dispute to be as expeditious as is reasonably practicable; and
- 7.1.5 the Expert's costs will be borne in equal proportions by the parties to the dispute and each such party will bear its own costs of the reference and determination of the dispute.

7.2 If for any reason the Expert shall fail to make a decision and give notice thereof within the time and in the manner herein before provided either Party may apply to the President or the Vice President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary.

7.3 Nothing in this clause 7 shall be taken to fetter the ability of the Council to carry out its statutory functions as local planning authority with powers to enforce breach of planning control arising from any breach of any of the obligations entered into by the Parties in this Agreement or any other planning breach in respect of the Application Site.

8 Notices

8.1 Any notice or communication to be given pursuant to this Agreement shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service. The address for service on the Parties shall be those stated in this Agreement, or such other address in England for service as the Parties to be served may have previously notified in writing.

9 Legal Costs and Monitoring Fee

9.1 On completion of this Agreement, the Owner shall pay to the Council the Council's reasonable legal costs properly incurred in connection with the negotiation preparation and completion of this Agreement.

9.2 Prior to Implementation the Owner shall pay the Monitoring Fee.

10 Indexation

10.1 The Contributions and component parts payable to the Council under this Agreement shall be Index Linked and for the avoidance of doubt Indexation shall not result in any decrease in the Contribution or component parts payable under this Agreement.

11 Third Party Rights

11.1 Nothing in this Agreement confers any rights in favour of any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 or any re-enactment or modification thereof for the time being in force and this Agreement may be so varied or discharged without consent of any such third party.

12 Jurisdiction

12.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales.

In witness whereof the Parties have executed this Agreement as a Deed the day and year first written before:

| SCHEDULE 1

The Application Site

All that land shown edged red on the Plan attached to this schedule and known as land at Hanslope Site, Long Street Road, Hanslope and being land comprised in Land Registry title number BM410348.



— Site Boundary

Rev	Drawn	Revision Description	Date

Document Name
Section 106 Plan
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SCHEDULE 2

The Development

Erection of up to one hundred and forty one (141) dwellings (Use Class C3) with associated access, earthworks and other ancillary and enabling works. All other matters (appearance, landscaping, layout and scale) reserved.

SCHEDULE 3

The Owner covenants with the Council as follows:

1. Affordable Housing

- 1.1 Not to First Occupy or permit to be First Occupied more than 50% of the Market Dwellings until 50% of the Affordable Housing Units have been constructed and transferred to the Registered Provider (unless otherwise agreed in writing by the Council) and not to First Occupy more than 80% of the Market Dwellings until the remainder of the Affordable Housing Units have been transferred to the Registered Provider (unless otherwise agreed in writing by the Council) at a price that enables the Registered Provider to provide Affordable Housing and in each case until evidence of such transfer has been provided to the Council.
- 1.2 The Affordable Housing Units shall not be used for any purpose other than for Affordable Housing **provided that** this provision shall:
 - 1.2.1 Not bind any mortgagee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Registered Provider and provided further that:
 - (a) a mortgagee receiver or manager shall in writing give the Council and the Registered Provider (as appropriate) three months prior notice of its intention to exercise any power of sale in respect of any of the Affordable Housing Units to provide the Council or the Registered Provider the opportunity to complete a transfer within such period of the Affordable Housing Units in question to another Registered Provider in order to ensure that they continue to be used for the purpose of Affordable Housing; and
 - (b) if the Council or Registered Provider is unable to complete such a transfer of the Affordable Housing Units within the said period of three (3) months in accordance with clause 1.2.1(a) then the mortgagee receiver or manager shall be entitled to dispose of the Affordable Housing Units on the open market and the restriction referred to at clause 1.2 of this Schedule 3 shall cease to apply to the Affordable Housing Units.

- 1.2.2 cease to apply to any part of the Affordable Housing where the Registered Provider is or shall be required to dispose of any part pursuant to a right to buy under Part IV of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable or is or shall be required to sell to a tenant with the benefit of a voluntary purchase grant provided under Sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation); and
- 1.2.3 cease to apply to any part of the Affordable Housing should such part be transferred or leased by any mortgagee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to Registered Provider;
- 1.2.4 cease to apply to any part of the Affordable Housing where a Shared Ownership Housing lessee "staircases out" whereby (in the case of a house) such lessee acquires a 100% equity share in the Affordable Housing Unit and either takes a transfer of the freehold reversion, is transferred to someone else or (in the case of a flat), acquires a 100% equity share in the lease and such lessee (or the lessee's nominee), and either takes a new non-social housing lease of the Affordable Housing Unit or retains the existing lease or any successor in title of such person.

2. Notices

- 2.1 To give the Council no less than 30 (thirty) days prior written notice of the date of Implementation of Development.
- 2.2 To give the Council no less than 30 (thirty) days prior written notice of the date of the intended First Occupation of the Development.
- 2.3 To give the Council no less than 30 (thirty) days prior written notice of the date of the anticipated date of the First Occupation of the fiftieth (50th) Residential Unit.

3. Carbon Neutrality

- 3.1 Not to Implement the Planning Permission unless and until it has submitted to the Council for its approval, such approval not to be unreasonably withheld or delayed, in writing a report setting out the method of calculation and the amount of the Carbon Neutrality Contribution payable .

3.2 Not to Occupy cause or permit to be Occupied any part of the Development unless and until it has paid to the Council the Carbon Neutrality Contribution as approved pursuant to paragraph 3.1 above.

4. Contributions

4.1 Not to First Occupy cause or permit to be First Occupied any part of the Development unless and until thirty percent (30%) the Contributions have been paid to the Council.

4.2 Not to First Occupy cause or permit to be First Occupied more than fifty percent (50%) of the Development unless and until a further forty percent (40%) the Contributions have been paid to the Council.

4.3 Not to First Occupy cause or permit to be First Occupied more than seventy five percent (75%) of the Development unless and until the remaining thirty percent (30%) of the Contributions have been paid to the Council.

5. Bus Voucher/Travel Information Pack

5.1 Not to First Occupy cause or permit to be First Occupied any of the Development unless and until it has submitted in writing to the Council for its written approval, such approval not to be unreasonably withheld or delayed, a draft Travel Information Pack PROVIDED THAT the draft Travel Information Pack shall be deemed to be approved if the Council do not respond within 30 Working Days.

5.2 To distribute the approved Travel Information Pack to each Residential Unit within 30 days of First Occupation of that Residential Unit.

6. Highway Works

6.1 Not to Implement the Planning Permission until the Owners have entered into a Highways Agreement with the Council to undertake the Highway Works necessary to service the Development.

6.2 Unless agreed otherwise in writing by the Council (Council acting reasonably), not to Occupy cause or permit to be Occupied any part of the Development unless and until the Owners have undertaken the Highway Works in accordance with the terms of the Highways Agreement.

7. Public Open Space

7.1 Not to Implement the Development (or if to be Phased, any Phase of the Development where that Phase includes any part of the Public Open Space) unless

and until it has submitted to the Council for its written approval (such approval not to be unreasonably withheld or delayed) the Public Open Space Specification and the Locally Equipped Area of Play Specification in relation to the Public Open Space (or the relevant part of the Public Open Space within that Phase) PROVIDED THAT the Public Open Space Specification and the Locally Equipped Area of Play Specification, such approval not to be unreasonably withheld or delayed.

- 7.2 Not to First Occupy the last Residential Unit fronting onto or adjoining the Locally Equipped Area of Play and/or not to Occupy more than seventy five percent (75%) of the Residential Units within the Phase whichever occurs sooner in which the Local Equipped Area of Play is situated unless and until the Locally Equipped Area of Play has been Practically Complete.
- 7.3 Subject to paragraph 7.4, not to First Occupy more than seventy five percent (75%) of the Residential Units unless and until the Public Open Space (excluding the Locally Equipped Area of Play) has been Practically Completed.
- 7.4 If the Reserved Matters applications for the Public Open Space split the delivery of the Public Open Space into different Phases, then not to Occupy more than seventy five percent (75%) of the Residential Units within each Phase in which the Public Open Space is situated unless and until it has laid out the Public Open Space (excluding the Locally Equipped Area of Play) in that Phase.
- 7.5 The Locally Equipped Area of Play shall be kept free from development (other than construction of the play area) including any works, including construction materials, spoil, equipment and building compounds.
- 7.6 To maintain the Public Open Space during the Maintenance Period for each relevant area of Public Open Space.
- 7.7 To notify the Council in writing of the date of Practical Completion of the relevant area of Public Open Space .
- 7.8 As soon as reasonably practicable following the date of Practical Completion of each area of the Public Open Space:

(i) the Owner shall request and the Council shall within a reasonable period (being not more than 20 Working Days) following such request inspect the completed area;

(ii) within 20 Working Days of such inspection the Council shall notify the Owner in writing either

(a) that it is satisfied (acting reasonably) that the relevant area has been constructed in accordance with the relevant Reserved Matters approval; or

(b) that it is not satisfied (acting reasonably) that the relevant area has been constructed in accordance with relevant reserved matters approval and detailing any remedial works which the Council (acting reasonably) requires to bring the relevant area and/or matters approval;

(iii) Where the Council serves notice pursuant to paragraph 7.8 (ii) (b) the Owner shall carry out and complete such works required in accordance with this Agreement within 28 Working Days following notification unless otherwise agreed in writing by the Council and the inspection and notification process shall be repeated;

(iv) In the event that the Council does not inspect or issue any required notice or response within the timescales referred to above then either party may at any time thereafter refer the matter for expert determination pursuant to clause 7 of this Agreement.

7.9 Within 20 Working Days of the expiry of the Maintenance Period for each relevant area of Public Open Space, the Owner shall offer to transfer the unencumbered freehold of the relevant area or areas of Public Open Space to the Council or the Council's nominee for the sum of one pound (£1.00) and the Council or the Council's nominee shall accept such transfer.

7.10 Upon the completion of the transfer of each relevant area of Public Open Space in accordance with paragraph 7.9 above, to pay to the Council the relevant Public Open Space Maintenance Contribution for the area to be transferred to be calculated in accordance with Schedule 5 of this Agreement

8. Public Art Contribution

- 8.1 Not to Occupy cause or permit to be Occupied any part of the Development unless and until it has engaged and agreed in conjunction with the Council an artist to assist with the integration of public art into various elements of the Development and to prepare the following documents for approval by the Council (such approval not to be unreasonably withheld or delayed):
- 8.1.1 A detailed public art commissioning plan;
 - 8.1.2 A public art design development statement; and
 - 8.1.3 A public art implementation and maintenance plan.
- 8.2 Not to Occupy cause or permit to be Occupied more than fifty percent (50%) of the Residential Units unless and until the pieces and/or features of public art approved by the Council pursuant to paragraph 8.1 of this Schedule 3 have been integrated into the elements of the Development and the Owner has produced receipts to the Council as to the total sum of money that has been spent on these features which should be equivalent to the Public Art Contribution.
- 8.3 In the event that the Owner elects to pay the Public Art Contribution to the Council in lieu of providing the public art on the Application Site, then not to Occupy cause or permit to be Occupied more than fifty percent (50%) of the Residential Units any part of the Development until it has paid the Public Art Contribution to the Council and upon payment those obligations under paragraphs 8.1 and 8.2 shall cease to have further effect.

SCHEDULE 4

The Council's Covenants

The Council covenants with the Owner as follows:

1. Expenditure of the Contributions

- 1.1 Where the Council receives any sum or amount pursuant to the obligations set out in this Agreement the Council shall:
 - 1.1.1 apply or expend such sums or amounts wholly and exclusively for the purposes respectively for which the same were paid as specified in this Agreement and to provide at the Owner's (which does not for these purposes include their successors in title) reasonable request no more than once in each year a statement to the Owner of the sums received, the sums applied and the use to which the money has been put;
 - 1.1.2 repay any such sum or amount remaining unexpended upon the expiration of seven (7) years from the date of the last payment to the Owner (which does not for these purposes include their successors in title) together with any interest accrued thereon;
 - 1.1.3 for the avoidance of doubt any contribution for Public Open Space or those allocated for maintenance shall be excluded from the provisions of paragraph 1.1.2.
- 1.2 The Council shall inspect the relevant completed area of Public Open Space within 20 Working Days of a request from the Owner to do so pursuant to paragraph 7.8 of Schedule 3.
- 1.3 The Council shall notify the Owner in writing of its decision pursuant to paragraph 7.8(ii) of Schedule 3 within 20 Working Days of inspection of the relevant area of Public Open Space.
- 1.4 The Council shall accept a transfer of the relevant area of Public Open Space as soon as reasonably practicable following an offer from the Owner pursuant to paragraph 7.9 of Schedule 3.

**SCHEDULE 5
PUBLIC OPEN SPACE MAINTENANCE CONTRIBUTION**

Type of Public Open Space	Amount/m²
Local Park (general public open space)	£21.00
Local Equipped Area of Play	£92.70

The Common Seal of)
Milton Keynes Council)
was hereunto affixed in the)
presence of: PAUL CUMMINS)



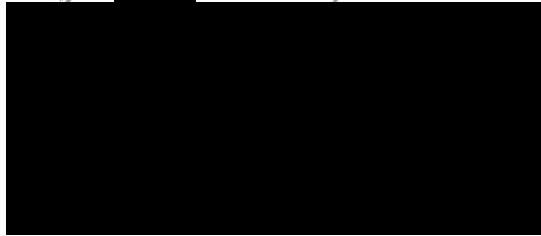
Head of Service
Legal Department



SIGNED AS A DEED by
John Wakefield Adams
In the presence of:



Witness name:
Simon PROCTOR

Witness address:


Occupation:
Chartered Surveyor