

DATED

2024

MAIDSTONE BOROUGH COUNCIL

-and -

HARVESTORE SYSTEMS (HOLDINGS) LIMITED

-and-

ALDI STORES LIMITED

DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO THE DEVELOPMENT OF
LAND NEWNHAM COURT WAY WEAVERING KENT ME14 5LH

Planning Application Ref No 22/505560/FULL

Planning Appeal Ref No. APP/U2235/W/24/3339531

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J. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in Section 111 of the Local Government Act 1972, Sections 12 and 93 of the Local Government Act 2003, Section 1 of the Localism Act 2011 and all other powers so enabling.

OPERATIVE PROVISIONS

IT IS AGREED as follows:

1. DEFINITIONS

1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by the definitions contained in Paragraphs 1.1 to the relevant Schedules:

“1990 Act”	means the Town and Country Planning Act 1990 (as amended);
“All in Tender Price Index”	means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors;
“Appeal”	means the appeal against the Council’s refusal of the Application which has been made to the Secretary of State by the Developer and given reference APP/U2235/W/24/3339531
“Application”	means the application for the erection of a new foodstore (Use Class E(a)), with access, car and cycle parking, landscaping and associated works submitted to the Borough Council to carry out the Development at the Land and given the registered reference number 22/505560/FULL;
“Commencement of Development”	means the carrying out of a material operation as defined in Section 56(4) of the 1990 Act which is not a

Preparatory Operation and the words **“Commence”** and **“Commence Development”** shall be construed accordingly;

- “County Council”** means The Kent County Council of Sessions House, County Hall, Maidstone, Kent, ME14 1XQ who are the local highway authority and the transport authority for the area within which the Land is situated;
- “Deed”** means this deed of agreement together with all Schedules and Appendices;
- “Development”** means the erection of a new foodstore (Use Class E(a)), with access, car and cycle parking, landscaping and associated works on the Land as set out in the Application and pursuant to the Planning Permission;
- “Index Linked”** means adjusted by reference to the relevant index pursuant to the provisions of Clause 20;
- “Interest Rate”** means 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment;
- “Land”** means the land against which this Deed may be enforced as detailed in Schedule 1 and shown edged red on the Plan;
- “Monitoring Fee”** Means the sum of £3,060 (three thousand and sixty pounds) towards the
- “Occupy”** means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, finishing or decoration of that building nor occupation in relation to site and building security operations and **“Occupation”** **“Occupier”** or **“Occupied”** shall be construed

accordingly;

“Parties” means the Owner, the Developer and the Borough Council as the context so requires and **“Party”** means any one of them;

“Plan” means the plan entitled “[] prepared by [] and dated [] annexed as Appendix 1;

“Planning Permission” means planning permission for the Development to be granted pursuant to the Appeal subject to conditions or if Clause [8.3] applies another planning permission for the Development subject to minor material amendment(s) granted pursuant to section 73 of the 1990 Act or a replacement permission for the Development;;

“Preparatory Operation” means an operation or item of work of or connected with or ancillary to:

- a) archaeological investigation;
- b) exploratory boreholes and trial pits;
- c) site clearance (but excluding demolition of a building or structure);
- d) diversion, decommissioning and/or laying of services for the supply or carriage of water, sewerage, gas, electricity, telecommunications or other media or utilities;
- e) the erection of fences and hoardings around the Land and;
- f) construction of temporary access and service roads.

“Retail Price Index” means the Retail Price Index as published by the Office for National Statistics;

“Statutory Undertakers” means any public gas transporter, water or sewerage

undertaker, electricity supplier or public telecommunications operator;

“VAT” means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it);

“Working Day” means a day which is not a Saturday, Sunday, bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday.

2. INTERPRETATION

- 2.1 A reference to any Clause, Plan, Paragraph, Schedule, Appendix or Recital is a reference to a Clause, Plan, Paragraph, Schedule, Appendix or Recital in (or in the case of plans attached to) this Deed.
- 2.2 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed.
- 2.3 Words importing the singular include the plural and vice versa.
- 2.4 Words importing the masculine gender include the feminine and neuter genders and vice versa.
- 2.5 Words denoting actual persons include companies, corporations and firms and all such words shall be construed as interchangeable in that manner.
- 2.6 Reference 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 Borough Council shall include any successor to its statutory functions.
- 2.7 Reference to any officer of the Borough Council means such officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions.
- 2.8 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 against each individual severally.

- 2.9 Words denoting an obligation on a Party to do any act, matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction.
- 2.10 References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order, delegated legislation, plans, regulations, permissions and directions amending, re-enacting, consolidating, replacing or made pursuant to the same as current and in force from time to time,
- 2.11 In the event of any conflict between the terms, conditions and provisions of this Deed and any document attached hereto or referred to herein the terms, conditions and provisions of this Deed shall prevail.
- 2.12 Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972, Sections 12 and 93 of the Local Government Act 2003, Section 1 of the Localism Act 2011 and any other enabling powers.
- 3.2 The covenants, obligations, restrictions and requirements imposed upon the Parties by this Deed:
- 3.2.1 are entered into pursuant to the provisions of Section 106 of the 1990 Act;
 - 3.2.2 are planning obligations for the purposes of Section 106 of the 1990 Act;
 - 3.2.3 relate to the Land;
 - 3.2.4 are entered into with intent to bind the Owner's interest in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come;
 - 3.2.5 are enforceable by the Borough Council as local planning authority;
 - 3.2.6 are executed by the respective Parties as a deed.

3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in Section 111 of Local Government Act 1972, Sections 12 and 93 of the Local Government Act 2003, Section 1 of the Localism Act 2011 and all other powers so enabling.

4. **CONDITIONALITY**

4.1 With the exception of this Clause 4, Clauses [1, 2, 3, 5.2, 5.3 and 7 to 25] inclusive and the requirements of Paragraph 2.1 of Schedule 4 (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission and the Commencement of Development.

4.2 In the event that the Inspector appointed by the Secretary of State in relation to the Appeal concludes that any one or more provisions/obligations of this Deed is not compatible with any of the tests for planning obligations set out in Regulation 122 of the CIL Regulations or exceeds the further limitations on the use of planning obligations set out in the CIL Regulations and accordingly expressly states within their decision letter that they attach no weight to that specific obligation in determining the Appeal then the relevant clause/obligation of this Deed shall have no legal effect and the Owner shall be under no obligation to comply with it but the remainder of the planning obligations in this Deed (if any) shall remain legally effective and binding.

5. **COVENANTS AND OBLIGATIONS OF THE OWNER**

5.1 The Owner covenants with the Borough Council to perform and observe the covenants, obligations, restrictions and requirements contained within this Deed.

5.2 The Owner shall permit the Borough Council and its authorised employees and agents upon reasonable prior notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Borough Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice.

5.3 The Developer covenants to pay before completion of this Deed:

5.3.1 the Borough Council's reasonable legal and administrative costs and disbursements in connection with the negotiation, preparation and execution of this Deed;

5.3.2 the sum of £3,060.00 to the Borough Council in connection with the monitoring and administration of this Deed.

whether or not this Deed is delivered in accordance with Clause 25.

6. COVENANTS AND OBLIGATIONS OF THE BOROUGH COUNCIL

6.1 The Borough Council covenants with the Owner that:

6.1.1 it will issue the Planning Permission within 7 days of the date of this Deed;

6.1.2 it will perform the Borough Council's covenants as set out herein.

7. RELEASE AND EXCLUSIONS

7.1 Save for Clause 5.2 no planning obligations contained in this Deed shall be binding on any Statutory Undertaker with any existing interest in any part of the Land or that acquires an interest in any part of the Land for the purpose of the supply of electricity, gas, water or sewerage, drainage or public telecommunication services.

7.2 No person shall be liable for breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to the rights of the Borough Council in relation to any subsisting or any antecedent breach, non-performance or non-observance arising prior to parting with such interest.

8. DETERMINATION OF THE PLANNING PERMISSION

8.1 Save for Clause 5.3 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 expires prior to Commencement of Development without the consent of the Owner.

9. FUTURE PERMISSIONS

9.1 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of this Deed.

10. VARIATIONS TO THE PLANNING PERMISSION

10.1 If the Borough Council agrees following an application under Section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under Section 78 of the 1990 Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and apply in equal terms to the new planning permission **UNLESS** the Borough Council in determining the application for the new planning permission (or the Secretary of State determining the Section 78 appeal in relation to that application) indicates that consequential amendments are required to this Deed to reflect the impact of the Section 73 application in which circumstances a separate deed under Section 106 or Section 106A of the 1990 Act (as the case may be) will be required to secure relevant planning obligations or other planning benefits relating to the new planning permission **BUT** nothing in this Deed shall in any way fetter the Borough Council's discretion in relation to the Section 73 application or the determination thereof.

11. DISPUTES AND EXPERT DETERMINATION In the event of any dispute or difference between the Parties touching or concerning any matter arising out of this Deed (SAVE FOR the amount of any contribution payable pursuant to this Deed or the due date of payment) such dispute or difference shall be referred to an expert ("the Expert") to be appointed on the application of the Parties by the President (or equivalent person) for the time being of the professional body in England chiefly relevant to such dispute or difference.

11.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 11.1 within ten (10) Working Days after a written request by one Party to the others to agree to the appointment of an Expert then the question of the appropriate Expert or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of a Party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs

shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares.

11.3 The Expert shall act as an expert and save in case of manifest error his decision shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares.

11.4 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten (10) Working Days in respect of any such submission and supporting material.

11.5 Any expert howsoever appointed shall be subject to the express requirement that a decision shall be in writing (and give reasons for his decision) and shall be reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received the last submission or written representation.

11.6 Nothing in this Clause 11 shall be taken to fetter or limit the ability of the Borough Council to carry out its functions and duties nor to limit the ability of any of the Parties to refer a dispute to the Courts of England and Wales.

12. NOTICES

12.1 Any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or other communication to be given under this Deed must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England and Wales) for the service of subsequent notices or other written

communications in which case those details shall be substituted for the details provided below.

Commented [PM(YU1)]: Can we add in allowance to do this via email. The Council will have a S.106 inbox and it is much easier for all involved to be done over email.

The Borough Council Maidstone Borough Council

Address **The Head of Planning & Development**

Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent, ME15 6JQ

Reference 20/501427/OUT

With a copy to **The Section 106 Monitoring Officer**

Where required **The Housing Delivery Manager**

The Owner

Address

Commented [LB2]: TBC

The Developer **ALDI Stores Limited**

Address

ALDI Sheppey
Real Estate
Thomsett Way,
Queenborough
Isle of Sheppey
ME11 5AR

12.2 Any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or other communication given pursuant to this Deed shall conclusively be deemed to have been received:

12.2.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h 00 on a Working Day the notice will be deemed to have been received at 09h 00 on that day and if delivery occurs after 17h 00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h 00 on the next Working Day; or

12.2.2 if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h 00 on the day two (2) Working Days after the date of posting.

Commented [PM(YU3)]: Same as above.

12.3 Any notice or request by the Owner for approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or other communication required pursuant to this Deed shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such notice or request relates.

12.4 When making any payment pursuant to the terms of this Deed the Owner shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such payment relates.

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

13. LOCAL LAND CHARGE

13.1 This Deed is a local land charge and shall be registered as such PROVIDED THAT if this Deed shall cease to have effect pursuant to Clause 8.1 then the Borough Council shall remove reference to this Deed from the local land charges register.

13.2 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Borough Council for confirmation to that effect and (subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) upon the Borough Council being satisfied that the relevant

obligation or covenant (as the case may be) has been satisfied the Borough Council shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner.

13.3 The Borough Council shall upon the written request of the Owner (and subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed.

14. SUCCESSORS IN TITLE

14.1 The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Borough Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof.

15. POWERS OF THE BOROUGH COUNCIL

15.1 Nothing contained or implied in this Deed shall fetter, prejudice, restrict or affect the rights, discretions, powers, duties, responsibilities and obligations of the Borough Council under all and any legislative instrument including statutes, by-laws, statutory instruments, orders and regulations for the time being in force in the exercise of its function as a local authority.

16. SEVERABILITY

16.1 If any provision (or part thereof) of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected, impaired or called into question.

17. RIGHTS OF THIRD PARTIES

17.1 The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed save for the successors in title to the Parties or the successors to their statutory functions.

18. CHANGE OF OWNERSHIP AND NEW INTEREST

18.1 The Owner shall not permit or allow completion of a transfer or lease of any Open Market Dwelling if any monies due to be paid to the Borough Council under the provisions of this Deed by the date of Occupation of that Dwelling have not been paid.

18.2 The Owner shall give the Borough Council immediate written notice of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Land or change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give:

18.2.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address); and

18.2.2 the nature and extent of the interest disposed of by reference to a plan.

PROVIDED THAT notice is not required to be given in respect of the conveyance, transfer, lease, assignment or mortgage of an individual Dwelling.

19. WAIVER

19.1 No waiver (whether expressed or implied) by the Borough Council of any breach or default or delay 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 Borough Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. INDEXATION

20.1 All the financial contributions payable pursuant to this Deed shall be Index Linked.

20.2 Where reference is made to any index in this Deed and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) issued or caused to be issued from time to time by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council (in consultation with the County Council where the Travel Plan Monitoring Contribution is affected) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council (in consultation with the County Council where the Travel Plan Monitoring Contribution is affected) shall approve.

21. INTEREST

21.1 If any sum or amount due under this Deed has not been paid to the Borough Council by the date it is due the Owner shall pay the Borough Council interest on that amount at the Interest Rate with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment.

22. VAT

22.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT.

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

23. AGREEMENTS AND DECLARATIONS

23.1 The Parties agree that:

23.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

23.1.2 nothing in this Deed grants planning permission or any other approval, consent or permission required from the Borough Council in the exercise of any other statutory function.

24. JURISDICTION

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

24.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

25. DELIVERY

25.1 This Deed is delivered on the date written at the start and the provisions of this Deed (other than this Clause and Clause 5.3 which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written

The COMMON SEAL of)
MAIDSTONE BOROUGH)
COUNCIL was affixed to this Deed)
in the presence of

Authorised Signatory

SIGNED as a DEED by

HARVESTORE SYSTEMS (HOLDINGS) LIMITED

acting by two Directors

or a Director and its Secretary:

Director

Director/Secretary

SIGNED as a DEED by

.....

as attorney for

ALDI STORES LIMITED

Attorney

under a power of attorney dated

in the presence of:

Witness' signature:

Name (in block capitals):

Address:

D R A F T

SCHEDULE 1: THE LAND

The land against which this Deed is enforceable comprises part of that land and premises situate at Newnham Court Way, Weaving, Kent, ME14 5LH registered under title number K423199 and shown edged red on the Plan of which the Owner is the registered proprietor of the freehold with title absolute subject to the matters in the Charges Registers but otherwise free from encumbrances.

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SCHEDULE 2: NOTICES

Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that:

Notification of Commencement of Development

- 1 it shall provide the Borough Council with no less than five (5) Working Days prior notice of the intended date of Commencement of Development and the Owner shall not Commence Development unless and until this notice has been provided to the Borough Council;
- 2 it shall notify the Borough Council promptly and in any event within five (5) Working Days of the actual date of Commencement of Development; and

Notification of Occupation

- 3 it shall provide the Borough Council with no less than five (5) Working Days prior notice of the intended date of Occupation of the Development and the Owner shall not Occupy the Development unless and until this notice has been provided to the Borough Council;
- 4 it shall notify the Borough Council promptly and in any event within five (5) Working Days of the actual date of Occupation of the Development;

SCHEDULE 3: FINANCIAL CONTRIBUTIONS

1. Interpretation of this Schedule

- 1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules

“Bus Contribution”	means the sum of [£100,000 (one hundred thousand pounds)]
“Travel Plan”	means the travel plan submitted to the Borough Council for its approval and pursuant to the Application;
“Travel Plan Monitoring Contribution”	Means the sum of [] towards the Borough Councils costs in monitoring compliance with the Travel Plan

2. Bus Contribution

- 2.1. The Owner covenants that it shall pay to the Borough Council the Bus Contribution before first Occupation of the Development.
- 2.2. The Owner covenants that it shall not Occupy the Development unless and until the Bus Contribution has been paid to the Borough Council.
- 2.3. The Borough Council covenants with the Owner that it shall apply the Bus Contribution as a contribution towards the [] purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree in writing and not to use the Bus Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 21 as if it were part of the principal sum paid by the Owner.
- 2.4. In the event that all or any part of the Bus Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 5 years from the date of payment and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person

who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's reasonable administrative expenses.

3. Travel Plan Monitoring Contribution

- 3.1. The Owner covenants that it shall pay to the Borough Council the Travel Plan Monitoring Contribution before first Occupation of the Development.
- 3.2. The Owner covenants that it shall not Occupy the Development unless and until the Travel Plan Monitoring Contribution has been paid to the Borough Council.
- 3.3. The Borough Council shall not transfer the Travel Plan Monitoring Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend (and for the avoidance of doubt "spend" and "spent" includes allocated or committed) the contribution on the monitoring of the Travel Plan.
- 3.4. If the Borough Council are of the view that the Travel Plan Monitoring Contribution will not be spent in accordance with Paragraph 3.3 the Borough Council shall repay such of the Travel Plan Monitoring Contribution as the Borough Council is holding at the date 10 years from the date of payment to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's reasonable administrative expenses.

SCHEDULE 4: BIO DIVERSITY NET GAIN

1. INTERPRETATION OF THIS SCHEDULE

1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules

Biodiversity Net Gain means an approach to development that aims to leave the natural environment in a measurably better state than before, achieving a 10% net gain in Biodiversity Units;

“BNG Contribution” means a sum to be paid to the Council in accordance with an approved BNG Offsetting Scheme to be used towards provision of Biodiversity Net Gain

“Biodiversity Unit(s)” means the product of the size of an area and the distinctiveness and condition of the habitat it comprises to provide a measure of biodiversity value;

“Landscape and Biodiversity Enhancement Management Plan (LBEMP)” means the landscape and biodiversity enhancement and management plan to be submitted to and approved by the Borough Council in accordance the Planning Permission;

“Off-Site BNG Land” means land outside the Site and offered for the provision of Biodiversity Net Gain in an approved BNG Offsetting Scheme;

The Owner covenants with the Borough Council that:

- 1.2 the approved LBEMP shall be implemented in full in accordance with the requirements of the approved details or any variation agreed in writing between the Owner and the Council from time to time.

- 1.3 where the approved LBEMP requires Biodiversity Net Gain to be provided either wholly or partly on Off-Site BNG Land, the Owner shall not Occupy the Development until the owner of the Off-Site BNG Land identified in the approved LBEMP has entered into a deed pursuant to section 106 of the Act and approved by the Borough Council in writing including covenants:
 - 1.3.1 to implement the LBEMP (or any variation thereto) to the extent that it affects the Off-Site BNG Land;
 - 1.3.2 not to use the Off-Site BNG Land for any purpose which would prejudice the LBEMP; and
 - 1.3.3 to pay an agreed sum based on the size and technical difficulty of the Off-Site BNG Land in respect of the costs incurred by the Borough Council in monitoring compliance with the deed;

- 1.4 where the approved LBEMP requires the payment of a BNG Contribution,
 - 1.4.1 not to Occupy the Development until the BNG Contribution has been paid to the Borough Council in full;
 - 1.4.2 to pay the BNG Contribution to the Borough Council prior to Occupation of the Development

- 1.5 where the approved LBEMP requires the purchase of off site Biodiversity Units:
 - 1.5.1 not to Occupy the Development until written evidence purchase of the relevant off site Biodiversity Units has been provided to the Borough Council;
 - 1.5.2 to provide written evidence of the purchase of the relevant off site Biodiversity Units to the Borough Council prior to Occupation of the Development

SCHEDULE 5: LOCAL LABOUR

The Owner hereby covenants with the Borough Council as follows:

- 1 Prior to the Commencement of Development to submit to the Borough Council for its approval a scheme to provide training and employment opportunities for local people and enterprise activities and opportunities for local businesses and suppliers to tender for work packages for the construction operation and management of the Development such measures to include:
 - 1.1 offering to place suitable local businesses nominated by the Borough Council on the Owner's contractor supplier list, subject to appropriate financial thresholds;
 - 1.2 advertising all construction and long term employment opportunities for a period of at least one week in a local newspaper and in such locations (not exceeding three) to be advised in writing by the Borough Council;
 - 1.3 requiring all sub-contractors to comply with paragraphs 1.1 and 1.2 above;
 - 1.4 using reasonable endeavours to organise a minimum of one employment event to advertise building trade employment opportunities within the construction or operational phase of the Development; and
 - 1.5 agreeing to cooperate fully with the Local Job Centre Plus and other employment services/training providers to facilitate maximum local employment and training opportunities within the Development;
2. Not to Commence the Development without first having obtained the Borough Council's written approval of the scheme submitted to the Council pursuant to para 1 of this schedule (the "Approved Scheme").
3. To carry out implement operate and comply with the provisions of the Approved Scheme.
4. not to amend the Approved Scheme without the written approval of the Council.

APPENDIX 1: PLAN

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