

DATE: 2021

Agreement relating to (inter alia) Section 106 of the Town and Country Planning Act 1990 in relation to the development at the Epsom Hospital Site, Dorking Road, Epsom, KT18 7EG (ref.21/00252/FUL)

Between

(1) EPSOM AND EWELL BOROUGH COUNCIL

(2) SURREY COUNTY COUNCIL

(3) SENIOR LIVING URBAN (EPSOM) LIMITED

and

(4) THE ST KILDA TRUST, CARE OF TRUSTEES RICHARD STEPHEN POTTON, IAIN HUGH OZANNE MACLEOD AND CHRISTOPHER WHITE

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PARTIES:

- (1) **EPSOM AND EWELL BOROUGH COUNCIL**, of Town Hall, the Parade, Epsom, KT18 5BY (the “**Council**”);
- (2) **SURREY COUNTY COUNCIL**, of Woodhatch Place, 11 Cockshot Hill, Reigate, Surrey RH2 8EF (the “**County Council**”);
- (3) **SENIOR LIVING URBAN (EPSOM) LIMITED**, a company incorporated and registered in England and Wales with number 11848482 which has its registered office at One Coleman Street, London, England, EC2R 5AA (the “**Developer**”); and
- (4) **THE ST KILDA TRUST, CARE OF TRUSTEES RICHARD STEPHEN POTTON, IAIN HUGH OZANNE MACLEOD AND CHRISTOPHER WHITE**, a charity registered in England and Wales with number 1041904 which has its public address at Irwin Mitchell LLP, Belmont House, Station Way, Crawley, RH10 1JA (the “**Trust**”).

RECITALS:

- (A) For the purposes of section 106 of the 1990 Act the Council is the local planning authority for the area within which the Land is situated and the party who is entitled to enforce the obligations contained in this Agreement for the benefit for the Council.
- (B) The County Council is the local highway and transport authority for the area within which the Land is situated and the party who is entitled to enforce the obligations contained in this Agreement for the benefit of the County Council.
- (C) The Developer is the freehold owner of the Developer’s Land.
- (D) The Trust is the freehold owner of the Trust Land.
- (E) The Developer submitted the Application to the Council.
- (F) On 6 May 2021 the Council issued a decision notice refusing planning permission pursuant to the Application.
- (G) On 4 June 2021 the Developer submitted the Appeal in respect of the Council’s refusal of the Application.
- (H) The Council is satisfied that the Development and the planning obligations set out herein would satisfy the tests in Regulation 122 of the CIL Regulations and the advice set out at paragraph 57 of the National Planning Policy Framework (July 2021) and considers that the planning obligations contained in this Agreement are:
 - a. necessary to make the Development acceptable in planning terms;
 - b. directly related to the Development; and
 - c. fairly and reasonably related in scale and kind to the Development.
- (I) The Developer has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Agreement in the event Permission is granted.

IT IS AGREED:

1. INTERPRETATION

1.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

“**1990 Act**” means the Town and Country Planning Act 1990 (as amended);

“**Appeal**” means the appeal (ref: APP/P3610/W/21/3276483) submitted by the Developer to the Planning Inspectorate pursuant to section 78 of the 1990 Act against the Council’s decision to refuse permission for the Application;

“**Application**” means the application for the Development submitted by the Developer to the Council to which the Council has allocated reference number 21/00252/FUL;

“**Available Nursery Places**” means the places open for attendance at the Nursery in any given period as determined by the Nursery Operator and made available by the Nursery Operator;

“**Car Club**” means a club operated and managed by the Car Club Provider in which members can book the Car Club Vehicle and use it for the period of the booking and park it in the Car Club Parking Space and a reference to “Car Club” shall be read and construed accordingly;

“**Car Club Membership Offer**” means an offer for free membership of the Car Club including up to 25 miles of free use of the Car Club for a period of one year commencing on the date on which the offer is accepted PROVIDED THAT it is accepted within 3 months of the date on which the offer is made;

“**Car Club Parking Space**” means the car parking space with a fast charge electric vehicle charging point that is located on the Land and is specifically reserved for the Car Club Vehicle;

“**Car Club Provider**” means an organisation accredited in the United Kingdom to provide cars for use by members of a Car Club in consideration of payment thereof and which is currently a preferred provider of the County Council;

“**Car Club Scheme**” means a scheme prepared by or on behalf of the Developer in accordance with Part 3 of Schedule 2 which complies with the Surrey Guidance on Car Clubs in New Developments;

“**Car Club Vehicle**” means an Ultra Low Emission vehicle which emits less than 75g/km and is EURO 6 compliant owned or provided by the Car Club Provider for the Car Club;

“**Care Units**” means all care residences, care apartments and care suites provided on-site, excluding any staff accommodation or guest accommodation, and “Care Unit” shall mean any one such unit;

“**CIL Regulations**” means the Community Infrastructure Levy Regulations 2010 (as amended);

“**Contributions**” means individually and collectively the Travel Plan Audit Contribution, the Confirmed TRO Contribution, the Woodcote Millennium Green Contribution, and the Vehicle Signage Contribution and “Contribution” shall be construed accordingly;

“**Decision Notice**” means a notice issued by either the Secretary of State or an Inspector determining the Appeal;

“**Developer’s Land**” means the land known as land on the south side of Epsom General Hospital, Dorking Road, Epsom KT18 7EG within the land edged red on the Location Plan and registered

at H.M Land Registry with absolute title under title number SY860843 shown for identification hatched green on the Location Plan;

“Development” means the demolition of existing hospital buildings, accommodation block and associated structures and redevelopment of the site to provide a new care community for older people arranged in two buildings, comprising 267 care residences, 10 care apartments and 28 care suites providing transitional care, together with ancillary communal and support services Use Class C2, 24 key worker units Use Class C3, children’s nursery Use Class E, as well as associated back of house and service areas, car and cycle parking, altered vehicular and pedestrian access, landscaping, private amenity space and public open space;

“Development RTPI Display” means a real time passenger information display system to be installed and maintained at the expense of the Developer within a communal area of the Development which displays information about the bus routes in the area at a location or locations as may be agreed in writing by the County Council, and any associated works that are reasonably required by the County Council;

“Dorking Road Bus Stops” means the eastbound and westbound bus stops P, Q, and R on Dorking Road;

“Dorking Road RTPI Display” means a real time passenger information display system to be provided at the Dorking Road Bus Stops or such other locations as may be agreed in writing between the County Council and the Developer which displays information about the bus routes that service the Dorking Road Bus Stops;

“Employment and Skills Plan” means the plan to be submitted to the Council for approval in accordance with paragraph 4 of Schedule 1 of this Agreement;

“Enrolment Procedure” means the procedure through which Available Nursery Places are allocated by the Nursery Operator;

“Expert” means an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications;

“Highway Works” includes provision, at the expense of the Developer, of raised kerbing at the Woodcote Green Road Bus Stop and Dorking Road Bus Stops, the widening of footways, the provision of vehicular accesses and the RTPI Display Works at the Dorking Road Bus Stop shelters in accordance with a scheme to be submitted by the Developer and approved in writing by the County Council and as shown for indicative purposes on the Highway Works Plans.

“Highway Works Plans” means the plans attached to this Agreement at Annex 2 and labelled “Ground Floor Masterplan”, “Level 00 Floor Plan” and “Bus Stop Locations”;

“Implementation” means commencement of development pursuant to the Permission by the carrying out of a “material operation” (as defined in s 56(4) of the 1990 Act) save that for the purposes of this Agreement the term shall not include works of demolition, surveys, site clearance, works of archaeological or ground investigation or remediation, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Development, the laying, removal or diversion of services, the provision of construction compounds, the temporary display of site notices or advertisements or piling works (and **“Implement”** and **“Implemented”** shall be construed accordingly);

“Index” means the “BCIS All-In Tender Price Index”, published by the Building Costs Information Service (BCIS) of the Royal Institution of Chartered Surveyors or any successor department or institution or any such alternative index or comparable measure of price inflation as may be agreed in writing by the Developer and the Council or the County Council;

“Index Linked” or **“Indexed”** or **“Index Linking”** means adjusted from the date of this Agreement in accordance with the BCIS All-In Tender Price Index by multiplying in each case the payment due by a fraction whose denominator shall be the last All-In Tender Price Index monthly figure published before the date of this Agreement and whose numerator shall be the last published BCIS All-In Tender Price Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure;

“Inspector” means the Inspector from the Planning Inspectorate appointed by the Secretary of State to determine the Appeal;

“Interest” means 4% above the base rate of the Bank of England from time to time;

“Key Worker” means any person who at the date contracts are exchanged for the letting of a Key Worker Unit is an employee or a person who has been formally offered and has formally accepted an offer of employment from any National Health Service entity;

“Key Worker Units” means 24 units of C3 residential accommodation (including any curtilage together with associated private driveways, garages, outhouses, gardens, accesses and parking areas forming part of those units) comprised of 6 x 2-bed units, 6 x 1-bed units, and 12 studio units to be provided to Key Workers as part of the Development at the Key Worker Rent and a **“Key Worker Unit”** shall mean any one of them;

“Key Worker Rent” means a rent of no more than 80% of the local Open Market Rent;

“Land” means the land at Epsom General Hospital, Dorking Road, Epsom Surrey, KT18 7EG registered at HM Land Registry with title numbers SY860843 and SY668491 and shown for identification edged red on the Location Plan;

“Landscape Ecological Management Plan” means the plan to protect species and habitats and provide planting on the Land to be submitted to the Council for approval in accordance with paragraph 3 of Schedule 1 of this Agreement;

“Legal Challenge”: means all or any application for judicial review under Part 54 of the Civil Procedure Rules 1998 (as amended) including any appeals to a higher court following a judgment of a lower court;

“Location Plan” means the plan attached to this Agreement at Annex 1 and labelled “Location Plan”;

“Monitoring Fee” means the sum of £1,500 to be paid by the Developer to the Council and the sum of £1,100 to be paid by the Developer to the County Council in accordance with clause 14 of this Agreement for the purpose of monitoring compliance with the obligations contained in this Agreement;

“Nursery” means the nursery to be provided as part of the Development;

“Nursery Operator” means the entity which occupies and operates the Nursery;

“Occupation” means occupation for the purposes permitted by the Permission but does not include occupation for the purposes of fitting out, decoration, marketing, staff training or site security (and **“Occupy”**, **“Occupiers”** and **“Occupying”** shall be construed accordingly);

“Open Market Rent” means the estimated amount of the best rent at which letting of an interest in property would have been completed at the valuation date assuming the following:

- (i) a willing lessor and willing lessee;
- (ii) that the lease terms are appropriate for the type of property in question;
- (iii) an arm’s length transaction;
- (iv) that there has been a reasonable period for proper marketing of the interest; and
- (v) that the parties to the transaction had each acted knowledgeably, prudently and without compulsion

“Payment Notice” means the notice of payment annexed to this Agreement at Annex 3;

“Permission” means full planning permission (subject to conditions) to be granted for the Development pursuant to the Appeal;

“Practical Completion” means completion save in minor respects so that the Development or part of the Development (as the case may be) can be used and can operate in the manner permitted by the Permission and **“Practically Complete”** shall be construed accordingly;

“RTPI Contractor” means a contractor employed by the Developer to carry out the RTPI Display Works who has been identified or approved by the County Council;

“RTPI Display Works” means, at the expense of the Developer, the installation by an RTPI Contractor of an RTPI Display at the Dorking Road Bus Stops, or such other locations as may be agreed in writing by the County Council, and any associated works that are reasonably required by the County Council including the payment of a commuted sum in respect of ongoing maintenance costs;

“RTPI Display” means a real time passenger information display system which meets the County Council’s specifications and which displays information about the bus routes that service the local area;

“Section 278 Agreement” means an agreement between the County Council, the Developer and the RTPI Contractor under section 278 of the Highways Act 1980 and such other legislative provisions as may be applicable in relation to the Highway Works;

“Section 73 Consent” means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to Section 73 of the 1990 Act was subject to;

“Specified Date” means the date upon which a Contribution or Monitoring Fee is due to be paid to the Council and or the County Council in accordance with this Agreement;

“Travel Plan” means the plan approved pursuant to the Permission;

“Travel Plan Audit Contribution” means the sum of £6,150 to be paid by the Developer to the County Council in accordance with paragraph 1 of Schedule 2 to this Agreement for the purpose of auditing compliance with the Travel Plan;

“The Confirmed TRO Contribution” means the sum confirmed by the County Council to be paid by the Developer to the County Council for the purpose of all costs reasonably incurred in connection with any necessary Traffic Regulation Order required in connection with the Vehicle Signage Installation and the County Council shall provide evidence of such sums if requested to do so by the Developer;;

“Trust Land” means that part of the Land known as Flat 1 to Flat 24 (inclusive) Woodcote Lodge, Woodcote Green Road, Epsom KT18 7DW within the land edged red on the Location Plan and registered at H.M Land Registry with absolute title under title number SY668491 and shown for identification as hatched orange on the Location Plan;

“Vehicle Signage Contribution” means the sum of £4,447.55 to be paid by the Developer to the County Council in accordance with paragraph 4 of Schedule 2 for the purpose of the Vehicle Signage Works;

“Vehicle Signage Works” means the installation of two vehicle activated signs on Woodcote Green Road by the County Council;

“Woodcote Green Road Bus Stop” means the westbound bus stop on Woodcote Green Road;

“Woodcote Millennium Green Contribution” means the sum of £25,500 to be paid by the Developer to the Council in accordance with paragraph 5 of Schedule 1 for the purpose of ongoing repairs and maintenance of the Woodcote Millennium Green;

“Working Day(s)” means a day other than a Saturday or Sunday or public holiday in England.

1.2 In this Agreement

1.2.1 references in this Agreement to the “Developer” and the “Trust” shall include their respective successors in title to the Land and their assigns;

1.2.2 references in this Agreement to the “Council” shall include any successor to its functions as local planning authority;

1.2.3 references in this Agreement to the “County Council” shall include any successor to its functions as local highway and transport authority;

1.2.4 references in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it;

1.2.5 the clause headings in this Agreement are for convenience only and do not form part of the Agreement;

1.2.6 references to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement;

1.2.7 references to the singular shall include the plural and vice versa;

1.2.8 references to the Land include any part of the Land;

1.2.9 any covenant by the parties to this Agreement not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and

1.2.10 if any provision is held to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.

2. STATUTORY POWERS

This Agreement entered into by Deed is a planning obligation for the purposes of section 106 of the 1990 Act and is entered into pursuant also to section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and it is acknowledged by the parties that the obligations contained within it are binding on the Land and are enforceable by the Council as local planning authority and County Council as the highway authority against the Developer as owner of the Developer's Land and against its successors in title and assigns in respect of its interests in each and every part of the Developer's Land and against the Trust as the freehold owner of the Trust Land and against its successors in title and assigns in respect of its interests in each and every part of the Trust Land.

3. LAND BOUND / LIABILITY

3.1 The Land is bound by the obligations in this Agreement.

3.2 The obligations under this Agreement shall not be binding on nor enforceable against:

3.2.1 any statutory undertaker which acquires any part of the Land or an interest in it for the purposes of its statutory undertaking; or

3.2.2 any individual owner, occupier or tenant of any part of the Development or any successor in title or any mortgagee or charge to such person;

3.3 Other than the obligations set out in Schedule 1, paragraph 2 the obligations contained in this Agreement shall not be binding upon nor enforceable against any leasehold owner of the Key Worker Units nor upon its chargee or a mortgagee and/or chargee of such owner-occupier or tenant of any of the Key Worker Units nor upon any successor in title or person deriving title under or through any such person.

4. CONDITIONALITY

4.1 The obligations in this Agreement (save for the covenants in clauses 13 and 14) are unless otherwise specified conditional upon:

4.1.1 the grant of the Permission; and

4.1.2 save for clauses 16 (Notices), 17 (Payments), 20 (Dispute Resolution) and paragraph 4.1.1 of Schedule 1 and 2.1.1 and 3.1.1 of Schedule 2, Implementation of the Permission.

5. DEVELOPER AND TRUST COVENANTS

5.1 The Developer and the Trust covenant with the Council to observe and perform the covenants on its part contained in Schedules 1 and 3.

5.2 The Developer and the Trust covenant with the County Council to observe and perform the covenants on its part contained in Schedule 2.

6. COUNCIL'S COVENANTS

The Council covenants with the Developer that it will observe and perform the covenants on its part contained in Schedule 4.

7. COUNTY COUNCIL COVENANTS

The County Council covenants with the Developer that it will observe and perform the covenants on its part contained in Schedule 4.

8. FURTHER SECTION 73 CONSENT

8.1 If any Section 73 Consent is granted after the date of this Agreement:

8.1.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent; and

8.1.2 the definitions of Application, Development and Permission shall be construed, other than for the purpose of Clause 1, to include reference to the planning application for the Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT in the event of a different section 106 obligation agreed by the Council being binding on any Section 73 Consent, this obligation shall not apply to that permission if that separate section 106 obligation expressly states that it is in substitution for the obligations in this Agreement.

9. RELEASE AND LAPSE

9.1 The parties agree that the parties to this Agreement shall not be liable for a breach of any of their respective obligations under this Agreement or obligations relating to any part of the Land, after they shall have parted with all of their interests in the Land or the part in respect of which the breach arises (as the case may be) other than in respect of any breach by them at the time when they held such an interest.

9.2 It is further agreed that this Agreement shall lapse and be of no further effect if:

9.2.1 the Permission shall expire without having been Implemented; or

9.2.2 the Permission shall be withdrawn, varied or revoked otherwise than with the consent of the Developer; or

9.2.3 the Permission is quashed following a successful Legal Challenge.

9.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Agreement.

10. LOCAL LAND CHARGE

10.1 This Agreement is a local land charge and the Council shall register it as such as soon as practicable after the completion of this Agreement.

10.2 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall cancel all the entries made in the register of local land charges in respect of this Agreement as soon as possible.

11. NO FETTER ON DISCRETION

Nothing in this Agreement shall fetter or prejudice the Council or the County Council's statutory rights, powers, discretions and responsibilities under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

12. SEVERABILITY

It is agreed that if any part of this Agreement is declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provision(s) will be severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

13. LEGAL COSTS

- 13.1 The Developer will no later than the date of this Agreement pay the Council's reasonable legal costs for preparation and completion of this Agreement up to a maximum of £1,500.
- 13.2 The Developer will no later than the date of this Agreement pay the County Council's reasonable legal costs for preparation and completion of this Agreement.

14. MONITORING FEE

The Developer covenants with the Council and the County Council to pay the Monitoring Fee prior to Implementation of the Development.

15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and the terms of the Agreement may be varied by a deed agreed between the parties without the consent of any third party being required.

16. NOTICES

- 16.1 The Developer covenants with the Council and the County Council to notify the Council and the County Council no less than 7 Working Days before the occurrence of each of the following:
- 16.1.1 Implementation of Development; and
- 16.1.2 Occupation of the Development.
- 16.2 Any notices required to be served by one party on another under this Agreement shall be in writing and served by special or recorded delivery or by hand in the following manner (or such other manner as notified by the relevant party to the other parties to this Agreement from time to time):
- 16.2.1 on the Council at the address shown above marked "For the attention of the Director of Environment, Housing and Regeneration";
- 16.2.2 on the County Council at the address shown above marked "For the attention of the Infrastructure Agreements Manager"; and
- 16.2.3 on the Developer at One Coleman Street, London, England EC2R 5AA marked "For the attention of the Development Manager" and bearing reference "Epsom Hospital S106 Agreement".

17. PAYMENTS

- 17.1 The Contributions payable under this Agreement shall be Index Linked.
- 17.2 The Contributions payable under this Agreement shall be taken to include the actual Contribution payable including any amount for Index Linking and also if due any Interest.

- 17.3 In the event that any Contribution or part thereof is not paid by the Specified Date then Interest shall be due on the sum outstanding and shall be apportioned on a daily basis from the Specified Date to date of actual payment.
- 17.4 Notwithstanding that the Developer shall pay Interest on the Index Linked sum as calculated pursuant to 17.3 above, the Developer shall also be responsible for the amount of Index Linking between the Specified Date to the date of actual payment even though that additional Index Linking attracts no Interest.
- 17.5 Any Interest paid will not form part of the Contribution due and will belong to the Council.
- 17.6 Any payments due to the Council or County Council under the terms of this Agreement shall be paid accompanied by the Payment Notice and monies shall be sent to the Council and or the County Council by means of bank telegraphic transfer.

18. VAT

All consideration set out in this Agreement is exclusive of VAT (unless the contrary is expressly stated).

19. MORTGAGEE OR CHARGEES LIABILITY

Any future mortgagee or chargee of the Land or any part thereof shall be bound by the obligations contained in this Agreement and its security over the Land shall take effect subject to this Agreement PROVIDED THAT such future mortgagee shall have no liability under this Agreement unless it takes possession of the Land or the relevant part thereof in which case it too will be bound by the obligations as if it were a person deriving title from the Developer or the Trust.

20. DISPUTE RESOLUTION

- 20.1 The parties agree that any differences and questions which arise between the parties in connection with this Agreement may be referred for determination by an independent person (an Expert) in accordance with the following provisions:
- 20.1.1 where such dispute relates to the construction of this Agreement or any other document referred to herein it shall be referred to a lawyer agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Law Society;
- 20.1.2 where such dispute relates to the acceptability or otherwise of a scheme submitted it shall be referred to a Chartered Town Planner agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Royal Town Planning Institute; or
- 20.1.3 where such dispute relates to the valuation of property and/or the viability of the Development it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Royal Institution of Chartered Surveyors.
- 20.2 Notice in writing of the appointment of an Expert pursuant to this Clause 20 shall be given by the Expert to the parties and he shall invite each to submit within a specified period (which will not exceed three weeks) any written representations each wishes to make to him and any submissions

shall be provided to the parties with an invitation to respond within a specified period (not exceeding two weeks).

- 20.3 The Expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
- 20.4 The Expert shall give notice in writing of his decision with reasons to the parties within six weeks of his appointment or within such extended period as the parties may together allow.
- 20.5 The decision of the Expert shall be final on all matters referred to him and in the absence of manifest error shall be binding on the parties.
- 20.6 If for any reason the Expert fails to make a decision and give notice in accordance with Clauses 20.4 to 20.5 any party may apply to the President or appointed deputy for the time being of the Law Society of England and Wales, Royal Town Planning Institute or Royal Institution of Chartered Surveyors for a substitute to be appointed in his place.
- 20.7 Each party shall bear its own costs save that the fees of the Expert shall be in the Expert's award.
- 20.8 Nothing in this Clause shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Agreement.
- 20.9 In the event of delays on the part of the Expert beyond the times specified above the parties may make representations to a solicitor appointed by the President for the time being of the Law Society of England and Wales and if in the opinion of the solicitor appointed there shall have been unreasonable delay the solicitor shall be entitled to dismiss the Expert and appoint a new Expert in his place and notwithstanding the foregoing the parties shall in any event have a right to require such replacement if the decision of the Expert is not made within three months of their appointment.

21. WAIVER

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

22. GOVERNING LAW AND JURISDICTION

This Agreement will in all respects be governed and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

23. APPEAL DECISION NOTICE

If the Decision Notice concludes that any one of the planning obligations set out in this Agreement are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to that particular obligation in determining the Appeal then the relevant obligation(s) shall from the date of the Decision Notice cease to have effect as set out in the Decision Notice and the Developer and the Trust shall be under no obligation to comply with it provided that this shall not prejudice the remaining obligations.

SCHEDULE 1
DEVELOPER AND TRUST COVENANTS TO THE COUNCIL

1. INTERPRETATION

1.1 In this Schedule 1 to the Agreement, unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

“**Affordable Housing**” means housing for sale or rent for those whose needs are not met by the market and which complies with the definition of Affordable Housing in Part 2 of the Council’s Revised Developer Contributions Supplementary Planning Document 2014 as the same may be amended from time to time;

“**Affordable Housing Contribution**” means the sum of £1,500,000 in total (with no indexation) for the purpose of the provision of off-site Affordable Housing in the Borough of Epsom & Ewell payable by the Developer in accordance with paragraph 2.1.1 of this Schedule 1;

“**Apprentice**” means a person who fulfils requirements of and participates in an apprenticeship scheme, works alongside experienced staff, gains job-specific skills related to construction, earns a wage, gets holiday pay, studies towards a related qualification (usually one day a week) in NVQ level 2 or above and are employed for a minimum of 12 months;

“**Construction Phase**” means the period of construction of the Development from Implementation of Development until Practical Completion of the Development;

“**Employment and Skills Plan**” means the Developer’s written plan to provide the apprenticeship scheme and local employment opportunities and submitted to the Council for approval in accordance with paragraph 4.1.1 of Schedule 1 of this Agreement;

“**End Use Occupation Phase**” means the period during which the Development is available for occupation by the end users of the Development.

2. AFFORDABLE HOUSING AND KEY WORKER UNITS

2.1 The parties agree the following arrangements for the provision of Affordable Housing:

2.1.1 the Developer and the Trust covenant with the Council to pay the Affordable Housing Contribution to the Council in accordance with paragraphs 2.2 and 2.3 of this Schedule 1; and

2.1.2 the Developer and the Trust covenant with the Council to make available the Key Worker Units in accordance with paragraph 2.4 of this Schedule 1.

2.2 The Developer and the Trust covenant to pay the Affordable Housing Contribution to the Council before Occupation of 75% of the Care Units.

2.3 The Developer and the Trust covenant that no more than 75% of the Care Units will be occupied unless and until the Affordable Housing Contribution has been paid in full to the Council.

2.4 The Developer and the Trust covenant that the Key Worker Units shall be:

2.4.1 let to or occupied by Key Workers only; and

2.4.2 let at the Key Worker Rent.

2.5 A mortgagee or chargee and its successors in title or any receiver or administrator appointed to realise its security of the whole or part of the Key Worker Units or any one of them shall not be

bound by the obligations relating to the provision/use of the Key Worker Units provided that it complies with the below:

- 2.5.1 Prior to seeking to dispose of any of the Key Worker Units, a mortgagee or chargee must give not less than one month's prior notice to the Council of its intention to dispose.
- 2.5.2 The notice period shall commence upon the date of receipt by the Council of the mortgagee or chargee's intention to dispose.
- 2.5.3 If the Council does not respond within the notice period, the mortgagee or chargee is entitled to dispose of its interest free of the affordable housing restrictions.
- 2.5.4 If the Council responds within the notice period and indicates that the transfer of the Key Worker Units can be made while safeguarding the units as Key Worker Units, then the mortgagee or chargee must co-operate with these arrangements and use reasonable endeavours to secure such a transfer, provided that:
 - (a) the mortgagee or chargee cannot be required to dispose of its interest for a sum less than the total of all accrued principal monies and interest directly arising from the Key Worker Units.
 - (b) if the transfer cannot be completed within two months from the date of the Council's response to the disposal notice, the mortgagee or chargee is entitled to dispose of its interest free of the Key Worker Unit restrictions.

3. LANDSCAPE ECOLOGICAL MANAGEMENT PLAN

- 3.1 The Developer and the Trust covenant with the Council to:
 - 3.1.1 submit the Landscape Ecological Management Plan to the Council for its approval prior to Occupation of the Development, such approval not to be unreasonably withheld or delayed;
 - 3.1.2 implement the Landscape Ecological Management Plan in accordance with its terms as approved pursuant to paragraph 3.1.1 from Occupation of the Development; and
 - 3.1.3 comply with the Landscape Ecological Management Plan for five years from the date of its implementation pursuant to paragraph 3.1.2.
 - 3.1.4 not to Occupy the Development until the Landscape Ecological Management Plan has been approved by the Council, such approval not to be unreasonably withheld or delayed.

4. EMPLOYMENT AND SKILLS PLAN

- 4.1 The Developer and the Trust covenant with the Council as follows:
 - 4.1.1 prior to the Implementation of Development to submit to the Council for its approval an Employment and Skills Plan such approval not to be unreasonably withheld or delayed;
 - 4.1.2 to implement the approved Employment and Skills Plan and comply with such during the Construction Phase and End Use Occupation Phase of the Development;

- 4.1.3 to seek to secure a minimum of 15% of all jobs created by the Development (in both the Construction Phase and for the first 2 years of the End Use Occupation Phase) for local residents through measures set out in the Employment and Skills Plan;
- 4.1.4 during the Construction Phase and the first 3 years of the End Use Occupation Phase to provide to the Council an annual monitoring report detailing:
- (a) the achievements against the Employment and Skills Plan;
 - (b) the duration of each apprenticeship created;
 - (c) the qualifications gained by the Apprentices; and
 - (d) any permanent jobs created.
- 4.2 Following the submission of the Employment and Skills Plan by the Developer in accordance with paragraph 4.1.1 of this Schedule 1 the Council agrees to respond to the Developer either approving, refusing or requesting changes to the Employment and Skills Plan no later than 21 days from the date of submission of the Employment and Skills Plan.
- 4.3 In the event that the Council does not respond to the Developer within the 21 day time period set out in paragraph 4.2 of this Schedule 1, the Employment and Skills Plan shall be deemed to have been approved by the Council.
- 4.4 The Employment and Skills Plan shall include:
- (a) realistic estimates of the numbers and types of jobs envisioned as being created by the Construction Phase and End Use Occupation Phase, with actual figures to be supplied through 12-monthly monitoring reports; and
 - (b) a detailed programme for the initiatives to be delivered by the Developer or its agent for the two years following the Occupation of the Development to schools and colleges located in Epsom and Ewell Borough to assist them in the promotion amongst young people aged 11 to 19 of the importance of the achievement of the skills and qualifications needed for employment in the care sector, including activities such as:
 - (i) career inspiration: speakers provided to schools, role models to inspire and encourage career progression, work ‘taster’ events;
 - (ii) employability: mentoring and support for specific cohorts of young people (e.g. under-achievers, high achievers, and young people from particular areas or estates), sessions on employer expectations, mock interviews and interview preparation;
 - (iii) curriculum support: advice on curriculum design to bring employer relevance into lessons; and
 - (iv) work- based learning: workplace visits to complement curriculum, work experience placements.
- 4.5 The Developer will work with the Council or its nominated agent and use all reasonable endeavours to achieve the 15% target referred to in paragraph 4.1.3 above through one or more of the following measures:

- 4.5.1 provision of apprenticeships for Epsom & Ewell Borough residents aged under 25, in a ratio of approximately one new apprenticeship per 25 residential units provided; and/or
- 4.5.2 notification of job vacancies, arising from both the Construction Phase and End-Use Occupation Phase, to the Council or any other agency nominated by the Council.

5. WOODCOTE MILLENNIUM GREEN CONTRIBUTION

- 5.1 The Developer and the Trust covenant with the Council to pay the Woodcote Millennium Green Contribution prior to Occupation of the Development.

6. NURSERY PLACES

- 6.1 The Developer and the Trust covenant with the Council to:
 - 6.1.1 open the Enrolment Procedure to Key Workers in respect of not less than 80% of the Available Nursery Places not less than one month prior to the date on which the Enrolment Procedure is open to the public; and
 - 6.1.2 ensure that any lease or other agreement on the basis of which the Nursery Operator occupies and operates the Nursery contains provisions requiring the Nursery Operator to comply with the obligations contained in paragraph 6.1.1 of this Schedule 1.

SCHEDULE 2
DEVELOPER AND TRUST COVENANTS TO THE COUNTY COUNCIL

1. TRAVEL PLAN AUDIT CONTRIBUTION

- 1.1 The Developer and the Trust covenant to pay to the County Council the Travel Plan Audit Contribution prior to Occupation of the Development.
- 1.2 The Developer and the Trust covenant that they shall not Occupy the Development unless and until the Travel Plan Audit Contribution has been paid to the County Council.

2. CAR CLUB AND CAR CLUB MEMBERSHIP OFFER

- 2.1 The Developer and the Trust covenant with the County Council to:
 - 2.1.1 submit to and obtain the written approval of the County Council of the Car Club Scheme prior to Implementation (or such timescale as may otherwise be agreed in writing by the County Council);
 - 2.1.2 submit to and obtain the written approval of the County Council of the details of the proposed Car Club Provider prior to Occupation of the Care Units;
 - 2.1.3 implement the approved Car Club Scheme prior to Occupation of the Care Units;
 - 2.1.4 to make the Car Club Membership Offer available to the first Occupier of each Care Unit; and
 - 2.1.5 to ensure that the Car Club of the approved Car Club Provider is provided for use by Occupiers of the Care Units and residents of the wider community in accordance with the approved Car Club Scheme for a continuous period from the date of Occupation of 25% of the Care Units and ending no earlier than three years following the date of Occupation of 25% of the Care Units.
- 2.2 The Developer and the Trust covenant that they shall not Occupy the Care Units unless and until the approved Car Club Scheme has been implemented and is operational.

3. CAR CLUB PARKING SPACE

- 3.1 The Developer and the Trust covenant with the County Council to:
 - 3.1.1 submit to and obtain the written approval of the County Council of the details of the proposed location of the Car Club Parking Space prior to Implementation (or such timescale as may otherwise be agreed in writing by the County Council);
 - 3.1.2 not to Occupy or permit Occupation of the Care Units unless the Car Club Parking Space details and location have been approved and the approved Car Club Parking Space has been provided for use by Occupiers of the Care Units and residents of the wider community; and
 - 3.1.3 to ensure that the approved Car Club Parking Space is provided for use by Occupiers of the Care Units and residents of the wider community for a continuous period from the date of Occupation and ending no earlier than three years following the date of Occupation of 25% of the Care Units.

4. VEHICLE SIGNAGE WORKS

- 4.1 The Developer and the Trust covenant with the County Council to:

- 4.1.1 pay the Vehicle Signage Contribution to the County Council prior to Occupation of the Care Units;
 - 4.1.2 pay the Confirmed TRO Contribution (if any) to the County Council prior to Occupation of the Care Units.
- 4.2 The Developer and the Trust covenant that they shall not Occupy the Development unless and until the Vehicle Signage Contribution and the Confirmed TRO Contribution (if any) have been paid to the County Council.

5. HIGHWAY WORKS

- 5.1 The Developer and the Trust covenant with the County Council not to Occupy the Development unless and until:
- 5.1.1 the Developer has entered into a Section 278 Agreement with the County Council and the RTPI Contractor for the Highway Works.
 - 5.1.2 the Developer has constructed the Highway Works in accordance with the Section 278 Agreement and made them available for public use.
- 5.2 The Developer and the Trust covenant with the County Council not to Occupy the Development unless and until the Developer has:
- 5.2.1 submitted to the County Council the specification for the Development RTPI Display and obtained the County Council's written approval thereto;
 - 5.2.2 completed the Development RTPI Display in accordance with the approved specification; and
 - 5.2.3 at the Developer's expense provided for the data feed to be fed to the Development RTPI Display and shall thereafter ensure that the Development RTPI Display and data feed shall be provided continuously throughout the lifetime of the Development.

SCHEDULE 3 CARE UNITS

1. INTERPRETATION

1.1 In this Schedule 3 to the Agreement, unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

“Assistance Plan” a plan for each resident in receipt of the Minimum Care Package, for what assistance they are to receive to be informed by the initial Qualifying Person Assessment and updated by later assessments as and when they occur, to reflect changing needs over time;

“CQC” means the Care Quality Commission, being the independent regulator of health and social care in England;

“Family Member” means spouse, cohabitee or dependant of a Qualifying Person;

“Personal Care” means the services as set out in Appendix 1 to this Schedule 3 which shall be provided by the Service Provider;

“Minimum Care Package” means receipt of a minimum of 2.5 hours per week of Personal Care.

“Minimum Specialist Design Features” means the minimum specialist design features as set out in Appendix 1 to this Schedule 3;

“Qualifying Person” means a person who is aged 65 years or over, and who has demonstrated a requirement for the Minimum Care Package through the Qualifying Person Assessment and is in receipt of the Minimum Care Package and for whom an Assistance Plan is produced and maintained;

“Qualifying Person Assessment” an assessment of a person’s requirements, confirming the care and assistance they require would meet the Minimum Care Package. Assessments will take place periodically post occupation, to ensure that the level of care and assistance being received is suitable to meet the resident’s full needs. Prospective residents undergo a full assessment by a suitably qualified person to ensure that he or she will be a qualifying person;

“Service Provider” means a body registered with the CQC (and which has not had its registration cancelled or suspended) under Chapter 2 of the Health and Social Care Act 2008 (or any successor register established under any statutory framework replacing such Act) in respect of the provision of personal care;

“Village Transport Services” means the village transport services as set out in Appendix 1 to this Schedule 3;

“Wellbeing Team” means the team led by a senior manager whose primary role is to connect with residents and bring together, as required, their support and networks. Their aim is to help residents engage socially and arrange outings and activities, as well as support the introduction of personal care services;

1.2 The definitions set out in clause 1.1 to this Agreement are also adopted in this Schedule 3.

DEVELOPER AND TRUST COVENANTS TO THE COUNCIL

- 1.1 Subject to paragraphs 1.2 and 1.3 of this Schedule 3, the Care Units will only be occupied by a Qualifying Person.
- 1.2 A Qualified Person may be accompanied by a Family Member who may also occupy a Care Unit.
- 1.3 In the event of the death of a Qualifying Person:
 - 1.3.1 a Family Member can only continue to Occupy a Care Unit provided they were living with the Qualifying Person in the Care Unit as their sole place of residence in the period immediately preceding the death of the Qualifying Person;
 - 1.3.2 subject to meeting the requirements of paragraph 1.3.1 above, the Family Member is permitted to remain living within the Care Unit for as long as they so wish, irrespective of their age or requirement for the Minimum Care Package;
 - 1.3.3 for the avoidance of doubt it is only the Family Member who lived in the Care Unit with the Qualifying Person in the manner described in paragraph 1.3.1 that will be permitted to remain in the Care Unit and the Family Member's own relatives, spouse(s), cohabitee(s) or dependants will not be permitted to Occupy the Care Unit unless they are Qualifying Persons.
- 1.4 The Care Units will not be used for any residential use falling within C3 of the Town and Country Planning Use Classes Order 1987.
- 1.5 The Development will incorporate the Minimum Specialist Design Features.
- 1.6 No more than 75% of the Care Units shall be Occupied until all of the Village Transport Services are in operation and available for use.

APPENDIX 1, SCHEDULE 3

PERSONAL CARE

Personal Care includes any of the following:

- (a) the wellbeing coordinator to organise and ensure the provision of house-keeping, property maintenance and ensure that personal affairs are kept in order;
- (b) time spent with the wellbeing coordinator to manage and arrange the delivery of prescription, medication or food services specific to the individual needs;
- (c) time spent with a Wellbeing Team member to organise and facilitate visiting clinical care specialist or allied health professional which include wellbeing checks, such as blood pressure and other health care indicators;
- (d) visits by registered nurses to provide nursing care and administer medications and general clinical support;
- (e) advice on health, including nutrition and other foundations of wellbeing, including physical exercise;
- (f) organised rehabilitation, following a hospital visit or health event;
- (g) personal care assistance, for example help with mobilising, bathing, going to the toilet, dressing eating or drinking;

Including access to:

- (a) a 24-hour emergency response system which will:
 - (i) provide attendance at residence if required;
 - (ii) provide comfort, reassurance and peace of mind to residents; and
 - (iii) facilitate/greet/liaise with emergency services if called.
- (b) the Wellbeing Team;
- (c) a full range of support personnel, who undertake housekeeping, property maintenance, personal affairs, arranging and facilitating external visits;
- (d) communal amenities;
- (e) the activities and events team who coordinate activities for residents to encourage engagement within the community and the surrounding area. Activities may include, weekly art and music classes, weekly games events, monthly cultural excursions, weekly shopping trips and gardening clubs;
- (f) a range of daily group exercise class;
- (g) 3 cooked meals a day from a fully equipped and staffed restaurant. with light refreshments offered within the reading room/cafe. Personalised catering can also be provided for those with higher care needs.

MINIMUM SPECIALIST DESIGN FEATURES

Communal Facilities to include the following:

- (a) Wellness Suite: Offering a mix of exercise, relaxation and therapeutic facilities including a swimming pool and gym, suitable to accommodate physiotherapy and rehabilitation activities, as well as group exercise classes that promote movement and social activity. Equipped with a number of therapy rooms, which can be made available for Health Practitioner visits and a salon for hair, manicure and pedicure treatments. Incorporating:
 - (i) Level access
 - (ii) Fixing points for lifting equipment
 - (iii) Clear signage
 - (iv) Lowered counter tops
 - (v) Heightened WC seats
 - (vi) Disabled changing and WC rooms
 - (vii) Numerous toilet facilities located close to all communal facilities
- (b) Restaurant: A restaurant providing for communal dining, also providing residents with the choice to have meals cooked in the restaurant served to them in their own home. Incorporating suitable accessibility standards.
- (c) Studio rooms/library/meeting place: For social activities.
- (d) Level Access throughout and lift access to upper floors.

Care Units to include the following:

- (a) An emergency call system;
- (b) Lift access to upper floors;
- (c) Maximised Natural Daylight by maximising windows doors and balconies, in number and size;
- (d) Kitchen work tops and wall cupboards lowered to a reduced height;
- (e) Ovens, microwaves, fridges and freezers installed at a suitable height to avoid bending down or stretching up to access them;
- (f) Electric hobs for cooking with isolator switch to reduce the risk of fire or burns;
- (g) WC seat high, positioned higher to allow for increased mobility;
- (h) Washbasins installed at a suitable height for wheelchair use;
- (i) Shower designs that aid access whilst preventing water spreading to bathroom floors;
- (j) Bathrooms designed to have the capability for grab rails or specific equipment to be installed as and when may be required by the resident, to meet their specific needs; and
- (k) A technology platform that offers organisational and communication functions, with a health and wellbeing focus on physical, emotional and cognitive support programs. Design standards will all be in accordance with Part M of the Building Regulations.

VILLAGE TRANSPORT SERVICES

Village Transport Service

The following transport services shall be made available by the Developer within the Development:

- (a) Car Club offering access to a shared Car Club Vehicle for residents of the Care Units.
- (b) Valet parking services to aid in car parking and deliveries.
- (c) Shuttle service, providing transport options outside of the community offering day trips, attending appointments etc.
- (d) Disabled access transport services.

SCHEDULE 4
COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

1. CONTRIBUTIONS

The Council and County Council covenant with the Developer and the Trust:

- 1.1 Where any Contribution referred to this Agreement is stated to be payable for a particular purpose it will not be used otherwise than towards that purpose.
- 1.2 Where any Contribution paid by any of the parties in accordance with this Agreement has not been used by the Council or the County Council or is not the subject of a binding contract within ten years after the date of receipt of the final instalment of the relevant Contribution it will be repaid to the paying party within 30 Working Days of a written demand (and for the purposes of this paragraph the repayment will be to the original paying party and not to that party's successor in title).

ANNEX 1 – LOCATION PLAN

ANNEX 2 – HIGHWAY WORKS PLANS

ANNEX 3 - PAYMENT NOTICE

Payment Notice

To be sent to:

Chief Legal Officer, Legal Services, Epsom & Ewell Borough Council, Town Hall, The Parade, Epsom, KT18 5BY

Surrey County Council

Ref: []

Payment of monies due under a S106 Agreement

Please answer all the questions. Each payment of a contribution head must be set out in a separate Payment Notice.

	Question	Response
1	Payment made by/on behalf of:	
2	Land at/Site address:	
3	Agreement Dated:	
4	Obligation in Agreement:	
5	Clause no:	
6	Contribution towards:	
7	Amount of contribution due:	
8	Date upon which contribution is/was due:	
9	Indexation completed and added, state amount:	
10	Interest added because payment late and state amount:	
11	Total amount of Contribution enclosed:	

Official Use: Date R'cd: _____ Confirmation of R'ct out: _____ Notifications out: _____ Interest/ Indexation Outstanding: _____

This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement.

IN WITNESS whereof the parties hereunto have executed this Deed the day and year first before written:

EXECUTION PAGE

<p>THE COMMON SEAL of the COUNCIL of Epsom and Ewell was hereunto affixed to this Deed in the presence of:-</p>	<p>)))</p>	<p>.....</p>
<p>Authorised signatory</p>	<p>)</p>	<p>.....</p>
<p>EXECUTED AS A DEED by Affixing THE COMMON SEAL of SURREY COUNTY COUNCIL in the presence of and attested by:-</p> <p>Director of Law/Authorised Signatory</p>	<p>)))</p>	<p>.....</p>
<p>EXECUTED as a DEED by SENIOR LIVING URBAN (EPSOM) LIMITED Acting by a director:</p>	<p>)</p>	<p>.....</p>
<p>In the presence of:</p>		
<p>Signature of witness</p>	<p>)</p>	<p>.....</p>
<p>Name (in BLOCK CAPITALS)</p>		
<p>Address</p> <p>EXECUTED as a DEED by THE ST KILDA TRUST Acting by:</p>		
<p><i>[To be confirmed by the Trust]</i></p>	<p>)</p>	<p>.....</p>

		RICHARD STEPHEN POTTON TRUSTEE
) IAIN HUGH OZANNE MACLEOD TRUSTEE
) CHRISTOPHER WHITE TRUSTEE