

N.B. This Agreement is a living document and will be updated regularly. It is intended as a model skeleton for a section 106 Agreement only and the Council reserves the right to add to it or amend it as necessary on a case by case basis.

Deed made pursuant to Section 106 of The Town and Country Planning Act 1990 (as amended)

In respect of [land known as]

Dated **

The Mayor and Burgesses of the London Borough of Bexley
(Council)

**
(Owner)

[**
(Mortgagee)]

Legal Services
London Borough of Bexley
Broadway
Bexleyheath
Kent DA6 7LB

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Deed made under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to land at **

Dated **

Between

- (1) **The Mayor and Burgesses of the London Borough of Bexley** (the **Council**) of Civic Offices, Broadway, Bexleyheath, Kent DA6 7LB; and
- (2) ** (the **Owner**) registered in England with number ** whose registered office is at [**¹; and
- (3) [** (the **Mortgagee**) registered in England with number ** whose registered office is at **]

Recitals

- A The Council is the local planning authority for the purposes of Section 1 of the Act for the area within which the Site is situated.
- B The Owner is the registered freehold owner of the Site with title absolute at HM Land Registry under title number ** .
- C The Planning Application was submitted to the Council on ** .
- D [The Council at its planning control committee meeting on the ** day of ** resolved to authorise the Head of Development Control to grant Planning Permission subject to the conditions of the Planning Permission and the prior completion of this Deed.]²
- E This Deed is intended to create planning obligations for the purposes of Section 106 of the Act.
- F The Owner is willing to enter into and be bound by obligations and be subject to the restrictions in this Deed on the terms set out herein.
- G [The Mortgagee consents to its interest in the Site being subject to the obligations given by the Owner in this Deed.]

It is agreed:

1 Definitions and Interpretation

1.1 Definitions

In this Deed the following expressions shall have the following meanings:

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

¹ All landowners/parties with an interest in the land and their mortgagees should be bound by the agreement. If the developer does not own the land the developer may enter into the agreement as an interested party in addition to the owner(s).

² Applications may be approved under delegated powers and therefore a Committee resolution will not always be involved.

Affordable Housing means housing designed to meet the needs of households whose incomes are not sufficient to allow them to access decent and appropriate housing in their borough and which comprises Social Housing and Intermediate Housing.

[Affordable Housing Schedule means the schedule and plan attached at Annex 3 which set out the details of the provision of Affordable Housing within the Development which shall include the tenure mix and unit mix and location of units as agreed with the Council.]

or

[Affordable Housing Schedule means a schedule and plan³ setting out the details of the provision of Affordable Housing within the Development to include the tenure mix and unit mix and location of units which the Owner shall submit to the Council for approval]⁴

Affordable Housing Units means Dwellings provided or to be provided as Affordable Housing in accordance with the Housing Corporation Scheme Development Standards and the Lifetime Homes Standard in a location as set out in the Affordable Housing Schedule of which 10% shall be designed and built to the South East London Regional Wheelchair Design Specification

Commencement of Development means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is first carried out

Commercial Unit means a unit for business, retail or office use constructed or to be constructed as part of the Development and which is not a Dwelling or community facility

[Design Code means a document setting out the key design principles for the Development including a plan showing separate character areas within the development and as a minimum within each character area: density; details of building types; parking provision; building materials; key elevational and architectural principles; location of landmark buildings and gateways; building heights; street types and block principles; roofs and boundaries; public realm materials including carriageways; footways; landscaping; street furniture, together with other details the Council may specify]

Development means the development of the Site pursuant to the Planning Permission

Dwelling means a residential unit (including a house flat or maisonette) constructed or to be constructed as part of the Development and includes Affordable Housing Units and Market Housing Units

Education Contribution means [£]

Employment Training Contribution means [£]

Expert means an expert with at least 10 (ten) years relevant experience of the matter in dispute appointed pursuant to Clause 13

Health and Social Services Contribution means [£]

Health and Social Services Land means the area of the Site marked [] on the Health and Social Services Plan [approved pursuant to paragraph 7.1.1 of Schedule 1]

³ This will be more than one schedule/plan for a large development, one for each phase.

⁴ This definition of Affordable Housing Schedule will be appropriate where the development is large and when the location and additional detail of affordable housing units may not be known at this early stage. The scheme will be required to be submitted to show locations before commencement of the development or before commencement of each phase as per the suggested clause at Schedule 1 paragraph 3.1 with footnote 6.

Health and Social Services Plan means the plan [attached at [Annex 5]]/[depicting the location of the health and social facilities [of x sqm site area]/[of a size sufficient to accommodate x needs]

Highway Works means the works to the highway described or referred to in [Annex 6] to this Deed

Highways Agreement means an agreement pursuant to [Section 38 and/or] Section 278 of the Highways Act 1980 or any other provision of law deemed appropriate providing for the carrying out of the Highway Works

Index means the [All In Tender Price Index or any successor index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation]

Intermediate Housing means sub market housing which is above Housing Corporation target rents but is below open market rent levels and is affordable by households with incomes of between £16,900 (sixteen thousand nine hundred pounds) and £33,000 (thirty three thousand pounds) in the case of 1 (one) and 2 (two) bedroom units and between £16,400 (sixteen thousand four hundred pounds) and £45,000 (forty five thousand pounds) in the case of 3 (three) or more bedroom units as set out in the Council's Supplementary Planning Document on Affordable Housing as updated from time to time and affordability shall be calculated by assuming housing costs (including any service charges) is no more than 40% (forty percent) of Net Household Income

Market Housing Units means Dwellings which are general market housing for sale on the open market and which are not Affordable Housing Units

Monitoring Fee means [£]

Net Household Income means 70% (seventy percent) of gross income

Occupation and **Occupied** means occupation for any of the purposes permitted by the Planning Permission but not including occupation solely by personnel engaged in construction, fitting out or decoration or occupation solely for marketing or display or occupation solely in relation to security operations

Open Space Contribution means the sum of [£] to be paid to the Council by the Owner in accordance with Policy TAL7 of the Council's Unitary Development Plan as a financial contribution in lieu of the provision of [on-site informal open space or] children's playspace within the Development

Open Space Specification means a document, to include a plan, detailing the location and layout of open space and the planting, trees, shrubs, hard and soft landscaping, any play equipment which will be retained or installed and a maintenance plan for such space

Planning Application means the [full/outline] application submitted to the Council [by/on behalf of] the Owner and allocated reference number [] for permission to develop the Site by the [insert the description of the development in the application]

Planning Permission means permission for the development granted pursuant to the Planning Application [substantially in the form of the draft attached at Annex 2]

Protected Tenant means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

- (c) has been granted a shared ownership lease by a Registered Social Landlord (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Social Landlord) and the tenant has subsequently purchased from the Registered Social Landlord all the remaining shares so that the tenant owns the entire Affordable Housing Unit

Public Art means physical pieces or elements of art to be provided to enhance the public realm and environment

Public Art Contribution means [£]

Public Realm Contribution means [£]

Public Realm Works means [*particular details to be confirmed for each development e.g. footpath design/CCTV coverage/landscaping*]

Registered Social Landlord means a housing association or other registered social landlord registered as such with the Housing Corporation under Section 1 of the Housing Act 1996 and included in the Council's list of preferred development partners or a registered social landlord registered with the Housing Corporation and not on the Council's list of preferred development partners but approved for the purposes of this Deed in writing by the Council such approval not to be unreasonably withheld or delayed.

Serviced means the land has been remediated to an appropriate standard for the uses to be permitted, including infrastructure and provision (to adoptable standard where applicable) of all necessary rights of access, gas, electricity, water, foul sewage and telecommunications infrastructure to the extent necessary so that it is adequate for the proposed use and where the utility is to be adopted with an executed agreement with the relevant body confirming that the infrastructure will be adopted without further payment to the relevant body.

Site Plan means the plan attached to this Deed as Annex 1

Site means the land shown edged red on the Site Plan and known as [**]

Social Housing means housing with rent no higher than target rent levels set by the Government for housing association rents and service charges including parking and set at a level where the tenancy is affordable for a household with an income of less than £16,900 (sixteen thousand nine hundred pounds) as set out in the Council's Supplementary Planning Document on Affordable Housing as updated from time to time on the basis of rents and service charges not exceeding 30% (thirty percent) of Net Household Income

Transfer Value means (for each Affordable Dwelling) a price not exceeding the transfer value for such Affordable Dwellings set out in Appendix 1 to the Council's Supplementary Planning Document on Affordable Housing as may be updated amended or superceded from time to time.

Transport Contribution means [£]

Travel Plan means a document setting out the measures to be undertaken by the owner or occupier of a Commercial Unit [or Dwelling⁵] to reduce dependency on the private car and to promote sustainable modes of transport

1.2 Interpretation

⁵ Some larger residential or mixed developments may require the provision of a travel plan covering occupiers of Dwellings and measures to encourage methods of transport other than the private car – this will be confirmed by the Council's Highway Engineer during initial discussions

- 1.2.1 Where in this Deed reference is made to a Clause Paragraph Schedule Recital or Plan such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital of (or in the case of a plan attached to) this Deed.
- 1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.2.4 Wherever there is more than 1 (one) person named as a Party and where more than 1 (one) Party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.2.6 References to any Party to this Deed shall include the successors in title to that Party and to any deriving title through or under that Party and in the case of the Council successors to its statutory functions.

2 Legal basis

- 2.1 This Deed is made pursuant to Section 106 of the Act and all other enabling powers [*insert any specific powers*].
- 2.2 The covenants, restrictions and requirements under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and its successors in title.

3 Owner's Covenant

- 3.1 The Owner covenants with the Council to comply with the obligations and to be bound by the restrictions set out in Schedule 1.

4 Council's covenants

- 4.1 The Council covenants with the Owner to comply with the obligations set out in Schedule 2.

5 Miscellaneous

- 5.1 The Owner shall pay to the Council the legal costs incurred by the Council in the negotiation, preparation and execution of this Deed on completion of this Deed.
- 5.2 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person other than the Owner or the Council (and any successors in title or assigns or successors bodies) shall have any rights under or be able to enforce the provisions of this Deed.
- 5.3 The restrictions and requirements contained in this Deed shall be treated as Local Land Charges and registered by the Council on the Local Land Charges Register for the purposes of the Local Land Charges Act 1975.

- 5.4 Subject to the Owner covering the Council's reasonable and proper costs, following receipt of notice from the Owner requesting that satisfaction of an obligation or obligations be noted on the register the Council will amend the register if it is reasonable and proper to do so.
- 5.5 Insofar as any Clause or Paragraph of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 5.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 5.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

6 [Mortgagee's consent

- 6.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Council acknowledges that the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.]

7 Waivers not to be of a continuing nature

- 7.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the terms or conditions or from acting upon any subsequent breach or default.

8 Enforcement Costs

- 8.1 Without prejudice to the terms of any other provision herein the Developer shall within 20 (twenty) days of a request pay all reasonable and properly incurred costs charges and expenses (including without prejudice to the generality thereof legal costs and surveyor's fees) reasonably incurred by the Council for the purposes of or incidental to the enforcement of any obligations of the Developer following a breach of obligations under this Deed.

9 Change in ownership

- 9.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit purchased by reference to a plan.

10 Indexation

- 10.1 Any sum referred to in Schedule 1 shall be increased by an amount equivalent to the increase in the Index from the date of the planning permission until the date on which such sum is payable.

11 Interest

- 11.1 If any payment due under this Deed is paid late, interest will be payable at 4% above the official bank rate paid on commercial bank reserves (Bank of England base rate) from 30 (thirty) days after the date payment is due to the date of payment.

12 VAT

- 12.1 All payments given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 12.2 The Owner hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of any financial contribution payable by the Owner in accordance with this Deed then to the extent that VAT had not been previously charged in respect of that contribution the Council shall have the right to issue a VAT invoice to the Developer and the VAT shall be paid accordingly.

13 Dispute resolution

- 13.1 The Parties agree that any differences and questions which arise between the Parties in connection with this Deed shall be referred for determination by an independent person in accordance with the following provisions:
- (a) where such dispute relates to the construction of this or any other deed or document it shall be referred to a lawyer agreed upon by the Parties or in default of agreement [within 1 (one) month] appointed, on the application of either Party, by or at the direction of the President or appointed deputy for the time being of the Law Society; and
 - (b) where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the Parties or in default of agreement [within 1 (one) month] appointed, on the application of either party, by or at the direction of the President or appointed deputy for the time being of the Institution of Civil Engineers; and
 - (c) where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the Parties or in default of agreement [within 1 (one) month] appointed, on the application of either Party, by or at the direction of the President or appointed deputy for the time being of the Royal Institution of Chartered Surveyors.
- 13.2 Notice in writing of the appointment of an Expert pursuant to this Clause shall be given by the Expert to the Parties and he shall invite each to submit within a specified period (which will not exceed 3 (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 2 (two) weeks).
- 13.3 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.
- 13.4 The Expert shall give notice in writing of his decision with reasons to the Parties within 6 (six) weeks of his appointment or within such extended period as the Parties may together allow.
- 13.5 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.
- 13.6 If for any reason the Expert fails to make a decision and give notice in accordance with Clauses 13.3 to 13.5 the Party or Parties may apply to the President or appointed deputy for the time

being of the Law Society, the Institution of Civil Engineers or the Royal Institution of Chartered Surveyors (as appropriate) for a substitute to be appointed in his place.

13.7 Each Party shall bear its own costs save that the fees of the Expert shall be in the Expert's award.

13.8 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 Deed.

14 Miscellaneous declaration

14.1 Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and its rights powers duties and obligations under all public and private statutes bye-laws and regulations may be as fully and effectively exercised as if the Council were not a Party to this Deed.

15 English Law Applicable

15.1 The construction validity and performance of this Deed shall be governed by English law.

16 Notices

16.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by first class post or recorded delivery addressed in the case of the Council to the Head of Development Control at Wyncham House, 207 Longlands Road, Sidcup, Kent DA15 7JH or in the case of the Owner to [the address given above][its registered office] or to such other addresses as either Party may from time to time notify to the other in accordance with the provisions of this Clause.

Executed by the Parties as a deed on the date first above written

THE COMMON SEAL of THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF BEXLEY was affixed)
to this Deed in the presence of:-)

Assistant Director (Legal Services)

Assistant Director (Audit, Technical & Exchequer)

Executed as a Deed by [the Owner])
acting by two Directors or a Director and)

its Secretary

)
)

Director

[OR

Director/Secretary

Executed as a Deed by the said [Owner] in the presence of:

Signature of witness

Name

Address]

Executed as a Deed by
duly authorised for and
on behalf of [the **Mortgagee**]

)
)
)

Schedule 1 – Owner's Covenants

1 Commencement of Development

- 1.1 The Owner covenants to give the Council at least 7 (seven) days prior notice of the intended date of the Commencement of Development.

2 Monitoring Fees

- 2.1 The Owner covenants to pay the Council the Monitoring Fee on completion of this Deed

3 Affordable Housing

- [3.1 The Owner covenants to submit to the Council for approval the Affordable Housing Schedule prior to [Commencement of Development] [commencement of each phase of the Development]]⁶
- 3.2 The Owner covenants not to Occupy or permit to be Occupied more than [50% of the] Market Housing Units until:
- 3.2.1 [all] [x%] of the Affordable Housing Units have been constructed in accordance with the Affordable Housing Schedule [as approved in accordance with Paragraph [3.1] above]⁷ and are ready for Occupation;
- 3.2.2 the freehold interest or the leasehold interest (for a period of (125) one hundred and twenty five years or more) of the land on which Affordable Housing is provided has been transferred to a Registered Social Landlord; and
- 3.2.3 the Council has received written notification that the Affordable Housing Units are ready for Occupation and have been transferred to a Registered Social Landlord.
- 3.3 The purchase price of the Affordable Dwellings shall not exceed the Transfer Value
- 3.4 The Owner covenants to provide a vehicular access and foul and surface water sewers and water gas electricity and telecommunication service systems for the Affordable Dwellings linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Development and connected ultimately to highways and sewers maintainable at the public expense
- 3.5 From the date of completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
- 3.5.1 any Protected Tenant or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective chargees; or
- 3.5.2 any chargee provided that the chargee shall have first complied with the requirements in Paragraph 3.6 below.
- 3.6 Any chargee shall prior to seeking to dispose of the Affordable Housing Units give not less than [6 (six)] months' prior notice to the Council of its intention to dispose and:

⁶ This requirement will be appropriate where the development is large and when the location and additional detail of affordable housing units are not known at this early stage and where the second definition of Affordable Housing Schedule has been used as per footnote 4.

⁷ This will be necessary where paragraph 3.1 has been used in accordance with footnote 6.

- 3.6.1 if the Council responds within [6 (six)] months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer;
- 3.6.2 if the Council does not serve its response to the notice served under Paragraph 3.6.1 within the [6 (six)] months then the chargee shall be entitled to dispose free of the restrictions set out in this Schedule;
- 3.6.3 if the Council or any other person cannot within [6 (six)] months of the date of service of its response under Paragraph 3.6.1 secure such transfer (despite having used best endeavours to attempt to do so) then provided that the chargee shall have complied with its obligations under Paragraph 3.6 the chargee shall be entitled to dispose free of the restrictions set out in this Schedule

[PROVIDED THAT at all times the rights and obligations in this Paragraph 3.6 shall not require the chargee to act contrary to its duties under the charge or mortgage.]

4 Contributions

- 4.1 [Prior to the Commencement of Development⁸] the Owner covenants to pay to the Council:
- 4.1.1 the Education Contribution[s];
- 4.1.2 the Employment Training Contribution[s];
- 4.1.3 the Health and Social Services Contribution[s];
- 4.1.4 the Open Space Contribution[s];
- 4.1.5 the Public Realm Contribution[s];
- 4.1.6 the Public Art Contribution[s]; and
- 4.1.7 the Transport Contribution[s].
- 4.2 [The Owner undertakes not to cause or permit the Commencement of Development unless and until it has made the payments set out in Paragraph 4.1 to the Council.]

5 Education Provision

[Larger developments may require a school or schools to be provided on Site prior to Occupation of a certain number of Dwellings. Appropriate terms will be inserted here]

6 Employment Training

[Any specific requirements beyond the contribution to be included here]

7 [Health and Social Services Land

- 7.1 The Owner covenants to:

⁸ For large development schemes, with a long build out period, alternative arrangements for the timing of payment may be negotiated.

- [7.1.1 [Submit to the Council and have approved the Health and Social Services Plan prior to [Commencement of Development]/[prior to Commencement of Development on Phase []⁹]
- 7.1.2 Service the Health and Social Services Land; and
- 7.1.3 offer to transfer the Health and Social Services Land to the Council (or the Council's nominee as advised to the Owner by the Council) for £1 (one pound) on the terms set out in Annex 4 prior to Occupation of [x] Dwellings.
- 7.2 If the Council or nominee accept the offer of the transfer described in Paragraph 7.1.3 within [1 (one) month] of the offer being made by the Owner the Owner will enter into the transfer on the terms set out in Annex [4] within 1 (one) month of the Council or nominee notifying the Owner that the offer of the transfer is accepted.]

8 [Open Space

- 8.1 The Owner covenants to submit to the Council for approval the draft Open Space Specification prior to Commencement of Development.
- 8.2 The Owner covenants to lay out the open space in accordance with the Open Space Specification approved pursuant to Paragraph 8.1 above prior to Occupation of [x] Dwellings.
- 8.3 The Owner covenants to [maintain the open space][transfer the open space to the Council] in accordance with the Open Space Specification.]

9 [Public Realm

- 9.1 The Owner covenants to submit to the Council and have approved a scheme detailing the Public Realm Works and the timescale for carrying them out prior to the Commencement of Development.
- 9.2 Following approval of the scheme described in Paragraph 9.1, the Owner covenants to implement the approved scheme.]

10 Public Art

- 10.1 The Owner covenants to submit to the Council and have approved a scheme detailing a permanent work or works of Public Art [which is integral to the Development and permanently affixed to the Development and its precise location on the Site and how it should be maintained] prior to the Commencement of Development¹⁰.
- 10.2 Following approval of the scheme described in Paragraph 10.1, [the Owner covenants to provide the Public Art in accordance with the approved scheme and maintain the Public Art in perpetuity].

11. Highway Works

- 11.1 The Owner covenants prior to Commencement of the Development to enter into a Highways Agreement with the Council providing for the carrying out of the Highway Works (but to the extent only that the Highway Works involve land within the Site or land forming part of the existing highway(s)) together with such bonding as the Council may reasonably require.

⁹ This provision is needed if the location of the facility is decided after the agreement is completed. If not, the plan will be attached and the provision is not required.

¹⁰ Alternative wording to be used if provision is to be off-site and/or procured by the Council

11.2 Subject to the completion of a Highways Agreement in accordance with paragraph 11.1 the Owner covenants to carry out and complete at the Owner's own cost the Highway Works to the Council's satisfaction prior to [the first Occupation of any part of the Development]

12 Transport

12.1 The Owner covenants to submit to the Council and have approved a Travel Plan for [each Commercial Unit] [phase¹¹ of Dwellings] prior to Occupation of [that Commercial Unit] [the first of those Dwellings].

13 [Design Code]

13.2 *[If the Planning Application is outline it may be appropriate to require that a Design Code is submitted for approval prior to Commencement of Development or before commencement on each phase on a large development. A Design Code is useful for measuring further submissions against. Reserved matters should conform with the code. Any such code should be approved before reserved matters are submitted, where an application is in outline.]*¹²

¹¹ Phase will need defining for agreements where it is to be used.

¹² An appropriate covenant will be included as necessary on a case by case basis

Schedule 2 – Council's Covenants

1 Planning Permission

- 1.1 The Council shall use reasonable endeavours to issue the Planning Permission within 7 (seven) days of completion of this Deed .

2 Expenditure of contributions

- 2.1 The Council covenants to use:
- 2.1.1 the Education Contribution towards providing school places or enhancing school facilities [in the vicinity of the Site];
 - 2.1.2 the Employment Training Contribution towards employment and skills training [in the vicinity of the Site];
 - 2.1.3 the Health and Social Services Contribution towards health and social care provision and/or facilities [in the vicinity of the Site];
 - 2.1.4 the Open Space Contribution towards the provision, improvement or maintenance of open spaces [in the vicinity of the Site];
 - 2.1.5 the Public Realm Contribution towards improving the public realm, the environment, public safety or pedestrian or cycle links [in the vicinity of the Site];
 - 2.1.6 the Public Art Contribution towards Public Art [in the vicinity of the Site]; and
 - 2.1.7 the Transport Contribution towards transport improvements [in the vicinity of the Site].
- 2.2 The Council covenants to return any sums paid pursuant to Schedule 1 and not committed to expenditure or spent within [10 (ten)]¹³ years of final payment to the Owner following receipt of a request from the Owner.

¹³ The time period will depend on the size of the development.