

DATED

2021

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CHESHUNT SPORTS AND LEISURE LIMITED (1)

and

THE COUNCIL OF THE BOROUGH OF BROXBOURNE (2)

and

LW DEVELOPMENTS LIMITED (3)

And

CO-OPERATIVE BANK PLC (4)

And

THE FOOTBALL STADIA IMPROVEMENT FUND LIMITED (5)

And

THE ENGLISH SPORTS COUNCIL (6)

Planning Obligation  
Section 106 of the Town and Country Planning Act 1990  
Relating to development on land at Theobalds Lane, Cheshunt, Herts

Planning Application Ref: 07/18/0514/F  
Planning Appeal Ref: APP/W1905/W21/3271027

This Deed is made on

2021

**Between:**

- (1) **CHESHUNT SPORTS AND LEISURE LIMITED** (CO REGN NO 07532736) of Theobalds Lane, Cheshunt, Waltham Cross, Hertfordshire, EN8 8RU (“Cheshunt FC” (“the Owner”))
- (2) **THE COUNCIL OF THE BOROUGH OF BROXBOURNE** of Borough Offices, Churchgate, Cheshunt, Waltham Cross, Hertfordshire EN8 9XB (“the Council”)
- (3) **LW DEVELOPMENT LTD** (CO REGN NO 01462577) of Regency House White Stubbs Lane, Broxbourne EN10 7QA (“the Developer”)
- (4) **CO-OPERATIVE BANK PLC** (CO REGN NO 00990937) of PO BOX 101, 1 Balloon Street, Manchester, M60 4EP (“the First Mortgagee”)
- (5) **THE FOOTBALL STADIA IMPROVEMENT FUND LIMITED** (CO REGN NO 04007132) of Eastbourne Terrace London W2 6LG (“the Second Mortgagee”)
- (6) **THE ENGLISH SPORTS COUNCIL** (CO REGN NO RC000766) of First Floor, 21 Bloomsbury Street, London WC1B 3HF (“the Third Mortgagee”)

**INTRODUCTION**

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- (B) Hertfordshire County Council is the registered proprietor of the freehold of the Site with title absolute registered at the Land Registry under title number HD494615 but is not entering into this Deed
- (C) The Council is the registered proprietor of the leasehold of the Site under a lease dated 14 January 1947 with a term of 999 years and registered at the Land Registry under title number HD489644 but is not entering into this Deed in its capacity as leaseholder
- (D) Cheshunt FC is the registered proprietor of the sublease of the Site under a lease dated 20 July 2011 with a term of 30 years and registered at the Land Registry under title number HD519893
- (E) The First Mortgagee has an interest in the Site by virtue of a charge dated 30 June 2020 and registered against title number HD519893
- (F) The Second Mortgagee has an interest in the Site by virtue of a charge dated 29 April 2015 and registered against title number HD519893
- (G) The Third Mortgagee has an interest in the Site by virtue of a charge dated 13 October 2015 and registered against title number HD519893

- (H) The Application was submitted to the Council seeking planning permission for the Development
- (I) The Council refused the Application on 23 November 2020
- (J) The Appeal has been submitted against the said refusal of the Application and is due to be determined by the Secretary of State
- (K) Each obligation undertaken in this Deed by the parties is a planning obligation for the purposes of Section 106 of the Act

#### **OPERATIVE PART**

#### **1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

**Act**

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

**Affordable Housing**

means housing to be made available to persons regarded by the Council as in Housing Need and with a Local Connection within the Borough of Broxbourne whose incomes are insufficient to enable them to rent or buy housing available locally on the open market

**Appeal**

means the planning appeal submitted against the Council's refusal of the Application which has been given appeal reference number APP/W1905/W21/3271027

**Application**

means the planning application Area 1 - New Stadium with capacity for up to 2000 spectators, 53 No 1 Bedroom Apartments, 62 No 2 Bedroom Apartments, 26 No 3 Bedroom Houses and 22 No 4 Bedroom Houses (163 Residential Dwellings) Highway Access works, internal roads and supporting infrastructure, Area 2 Northern Block, New facilities for Cheshunt Football Club in use classes D1, D2 and Sui Generis - matters relating to internal layout and appearance reserved. Area 3 - Western Block - New sports, community, leisure and commercial uses in use classes A1, A3, A4, A5, B1 D1 and D2 - Matters relating to internal layout reserved and registered by the Council under reference number 07/18/0514/F

**Apartments**

means the 53 No 1 Bedroom Apartments and 62 No 2 Bedroom Apartments to be erected on the Site in accordance with the Planning Permission as shown on Plan 2

**Bond**

means a bond or bonds with the Surety for the delivery of the Commercial Development either in its entirety or in such phases as provided by Reserved Matters Applications such bond(s) to be in substantially the form set out in Appendix 4 to the effect that should the Owner default in the execution of its obligations to deliver the Commercial Development in accordance with the provisions of this Deed then the Council may call upon the Surety to provide the full value of the Bond(s) to ensure the delivery of the Commercial Development or part of it

**Bond Figure**

means the estimated costs of delivering the Commercial Development either in its entirety or in such phases as provided by Reserved Matters Applications plus 10 per cent and such Bond Figure(s) shall be subject to the prior written approval of the Council

**Certificate of Final Completion**

a certificate issued by the Owner's or Developer's architect or employers agent (as appropriate) following the end of the Maintenance Period to the effect that the Managed Areas are complete and all defects which have become manifest since the issue of a Certificate of Practical Completion have been made good

**Certificate of Practical Completion**

a certificate of practical completion issued by the Owner's or Developer's architect or employers agent (as appropriate) to the effect that the relevant works to lay out the Managed Areas have been completed in all material respects;

**Club Facilities**

means the facilities provided for Cheshunt FC within the Northern Block of the Site as shown on Plan 2

**Clubhouse and Stadium Management Scheme**

Means a scheme detailing how the Club Facilities and Stadium will be managed in order to ensure the delivery of community benefits in accordance with Schedule [X]

**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 begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and Commence the Development or Commence Development shall be construed accordingly

**Commercial Block**

means the facilities available for commercial use within the western block of the Site as shown on Plan 2

**Commercial Block Management Scheme**

Means a scheme detailing how the Commercial Block will be managed in order to ensure delivery of community benefits in accordance with Schedule [Eight](#)

**Commercial Development**

those parts of the Development which comprise the Stadium, the Club Facilities and the Commercial Block which are shown edged blue on Plan 3

**Commercial Development Management Scheme**

a detailed public realm management and maintenance plan within the Development relating to the management and maintenance of the private areas and roads within the Commercial Development to be submitted to and approved by the Council which shall include details of:

- (a) a plan defining the Managed Areas which is to include all common areas of the Commercial Development outside the building footprints;
- (b) full details of the maintenance specifications for the Managed Areas within the Commercial Development and full details of the management programme for implementing those specifications to be managed by the Management Company provided that the details submitted may be amended or varied by written agreement of the Council;
- (c) the responsibilities of the Management Company and its management structure;
- (d) in the case of the Management Company copies of its memorandum and articles of association;
- (e) the proposals for the long term funding of the Management Company including the setting and collection of the service charges and any sinking/reserve fund and evidence of the covenants on occupiers of the Development to pay a service charge in respect of the Managed Areas within the Commercial Development to the Management Company;
- (f) full details of the proposed maintenance regime of ~~the~~ those parts of the Land which will remain outside of the private curtilage of the buildings but which may not fall within the management of the Management Company including but not limited to any pumping station(s) and parking courts and/or spaces and car parks

**Contributions**

means collectively all of the contributions payable to the Council pursuant to this Deed namely the Highways Contribution

**Deed**

means this present deed

**Development**

means the development of the Site pursuant to the Planning Permission

**Drainage Connection Rights**

the grant of rights of surface water drainage for the benefit of the Sports Pitches and any rights to be granted which are reasonably necessary to allow the owners of the Sports Pitches (and their contractors and/or employees) to construct and maintain a surface water drainage connection to the surface water drainage apparatus constructed / installed within the Development as shown for indicative purposes on drawing number 11 appended at Appendix 3

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**Dwellings**

means and dwellings (including both Houses and Apartments) to be constructed pursuant to the Planning Permission

**Fire and Rescue Service**

means any part of Hertfordshire County Council known as the Hertfordshire Fire and Rescue Service

**Highways Contributions**

means the sum of £270,000.00 (two hundred and seventy thousand pounds) payable to the County Council to secure off-site road improvements to Theobalds Lane including:

- Traffic calming measures by way of 3.no speed cushions;
- Tactile paving and dropped kerbs to junctions along Theobalds Lane;
- Widening of the radii at the Theobalds Lane/A10 Junction; ~~and~~
- Provision of a new bus shelter on the northbound route outside of Theobalds Grove Station; ~~and~~
- Improvements to the chicane and associated embankments within Theobalds Lane

**Houses**

means the 26 No 3 Bedroom Houses and 22 No 4 Bedroom Houses to be erected on the Site in accordance with the Planning Permission as shown on Plan 2

**Housing Need**

a person has housing need if EITHER they are homeless or the dwelling which they occupy is overcrowded or unfit for human habitation AND their financial circumstances are such that they cannot house themselves in accommodation available on the open market which is not overcrowded or unfit for human habitation within the area of the Borough of Broxbourne or persons who are deemed to be in housing need in line with the Council's allocation policy and "homeless" "overcrowded" and "unfit for human habitation" shall be interpreted in accordance with the Housing Acts 1985 and 1996;

**Index Linked**

means the amount specified to be paid or secured is increased proportionately to the same extent as the change occurring in the Index figures of the Retail Price Index (RPI) (Index) as published by the office of National statistics or such other index or indices as identified by the Council if the RPI Index ceases between the date of this Deed and the date on which the relevant ~~Council~~ Contribution is paid or the Bond is provided

**Inspector**

the planning inspector appointed by the Secretary of State who will be determining the Appeal

**Local Connection**

a person has a local connection if they or their spouse or person with whom they live as a spouse are ordinarily resident within the area of the Borough of Broxbourne and have been for six months in the 12 months or 3 years in the 5 years immediately prior to their occupation of an affordable housing unit or have a parent or child or sibling such sibling being over 18 years of age so resident or have permanent employment in the said area or were on the Council's housing register maintained immediately prior to their occupation of an affordable housing unit;

**Management Company**

a fully constituted residents' management company incorporated and appointed to manage and maintain with the Managed Areas in accordance with the Residential Development Management Plan and/or the Commercial Development Management Plan for the lifetime of the ~~D~~evelopment and which is a private limited company to be established by the Owner or an existing company (registered at Companies House) and which for the avoidance of doubt can be the Owner;

**Maintenance Period**

a period of 12 months starting from the date of the issue of the Certificate of Practical Completion;

**Managed Areas**

those parts of the Development that are intended to remain in the ownership of the Owner or its appointed Management Company and which are intended to be used in common by the owners and occupiers of the Development and as identified as part of the Residential Development Management Plan and /or the Commercial Development Management Plan and being:

- (a) open space;
- (b) all attenuation/detention basins/SUDS so far as they are not adopted and maintained at the public expense;
- (c) local equipped area for play/local area for playLEAP/LAP;
- (d) Unadopted highways;
- (e) planting; and
- (f) any other areas outside of private curtilage

but excluding in relation to the Residential Development Management Plan:

- (a) any apartment blocks including the communal areas within or exclusively serving the apartment blocks; and
- (b) any shared accessways which are to be transferred to and maintained by the owners of the Dwellings served by the same

**Occupation**

means the first physical occupation of a Dwelling for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing and "Occupied" "Occupy" and "Occupier" shall be construed accordingly

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**Phase**

means in relation to the Commercial Development the Club Facilities the Stadium and/or the Commercial Block

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**Plan 1**

means the plan showing the Property annexed at appendix 1 to this Deed

**Plan 2**

means the plan showing the location of the Houses, Apartments, Commercial Block, Stadium, and Club Facilities and the Residential Development and the Commercial Development and annexed at appendix 2 to this Deed.



### **Plan 3**

means the plan showing the Sports Pitches and annexed at appendix 3 to this Deed

### **Planning Permission**

means the planning permission which may be granted for the Development pursuant to the Application and any reference in this Deed to Planning Permission includes any subsequent renewal, amendment or modification of a Planning Permission including any permission granted pursuant to Section 73, 73A or 96A of the Act and any reference to the Development includes the development proposed in any such renewed, amended or modified Planning Permission

### **Planning Obligations**

Means the sum of Ten Million Four Hundred and Seventy Nine Thousand and fifteen pounds (£10,479,015) to be used by the Council towards the mitigation of the impacts of the Development and including:

- (a) Off-Site Affordable Housing Contribution of Six Million Five Hundred thousand Pounds (£6,500,000)
- (b) Education Contribution towards both Primary and Secondary Education of Two Million Eight Hundred and Forty Five Thousand Three Hundred and Twenty Eight Pounds (£2,845,328)
- (c) Strategic highways Contribution of Two Hundred and Eighty One Thousand Six Hundred and Sixty Four Pounds (£281,664)
- (d) Sustainable transport Contribution of Two Hundred and Eighty One Thousand Six Hundred and Sixty Four Pounds (£281,664)
- (e) Health Contribution of One Hundred Thousand Five Hundred and Seventy One Pounds (£100,571)
- (f) Youth Services contribution of six Thousand and Thirty One Pounds (£6,031); and
- (g) Sport and Recreation Contribution of Four Hundred and Sixty Three thousand Seven Hundred and Fifty Seven Pounds (£463,757).

### **Reasonable Endeavours**

means all those reasonable steps which a prudent and determined person or company acting in his or its best interests and anxious to achieve the stated objective would take (save where this Deed otherwise indicates)

### **Reserved Matters Application(s)**

means an application or applications seeking approval in detail of design and layout matters pursuant to the Planning Permission

### **Reserved Matters Approval**

means approval or approvals by the Council or the Secretary of State to a Reserved Matters Application or Applications

**Residential Development**

means those parts of the Development which comprise the Houses and the Apartments as shown on Plan 2

**Residential Development Management Plan**

a detailed public realm management and maintenance plan within the Development relating to the management and maintenance of the private areas and roads within the Residential Development to be submitted to and approved by the Council which shall include details of:

- (a) a plan defining the Managed Areas which is to include all common areas of the Residential Development outside the building footprints;
- (b) full details of the maintenance specifications for the Managed Areas within the Residential Development and full details of the management programme for implementing those specifications to be managed by the Management Company provided that the details submitted may be amended or varied by written agreement of the Council;
- (c) the responsibilities of the Management Company and its management structure;
- (d) in the case of the Management Company copies of its memorandum and articles of association;
- (e) the proposals for the long term funding of the Management Company including the setting and collection of the service charges and any sinking/reserve fund and evidence of the covenants on occupiers of the Development to pay a service charge in respect of the Managed Areas within the Residential Development to the Management Company;
- (f) full details of the proposed maintenance regime of the those parts of the Land which will remain outside of the private curtilage of the Dwellings but which may not fall within the management of the Management Company including but not limited to any pumping station(s) and parking courts and/or spaces and car parks

**Sports Pitches**

means the land shown edged red on Plan 3

**Stadium**

means the football pitch and supporter facilities as shown on Plan 2

**Site**

means the land described in the First Schedule hereof and identified on Plan 1

**Surety**

means a financial institution of recognised financial standing in England and such institution to be approved in writing by the Council prior to the provision of the Bond(s)

**Travel Plan**

means a document prepared in accordance with Hertfordshire County Council's Travel Plan Guidance 2020 with the aim of supporting sustainable transport and reducing vehicle travel to and from the Site

**Travel Plan Monitoring Report**

means the annual report that is submitted to the Council by the Travel Plan Co-Ordinator in a form acceptable to the Council that provides a summary of the traffic counts and resident surveys to demonstrate that the Travel Plan objectives and targets are being achieved

**Travel Plan Co-ordinator**

means a person or company appointed by the Owner to fully implement and monitor the Travel Plan

**Water Scheme**

means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus or where existing water services are to be used it shall mean the details of the residential dwellings and the water supply to them;

**Working Day**

means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England and **Working Days** shall be construed accordingly

**2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 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 interchangeable in that manner

- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 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
- 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
- 2.7 Any covenant not to act includes an obligation not to cause allow permit or suffer that act or thing to be done by another person and any covenant to do any act or thing includes an obligation to procure the doing of that act or thing by any other person
- 2.8 A reference to writing or written excludes fax and email

3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106 of the Act, , section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers and to the extent that they fall within the terms of section 106 of the Act the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council, in so far as an Inspector deems them compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)
- 3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed and which create planning obligations pursuant to Section 106 of the Act are enforceable by the Council as local planning authority
- 3.3 The planning obligations created by this Deed bind and run with the Property without limit of time so as to bind the Owner, and their successors in title and assigns of each and every part of the Property and any person corporate or otherwise claiming through or under the Owner an interest or an estate in any part or parts of the Property.

4. **CONDITIONALITY**

The obligations set out in the Schedules to this Deed take effect on the Commencement of Development (save for those obligations or other provisions hereinafter contained that expressly or by necessary implication require compliance prior to Commencement of Development which are conditional only upon the grant of the Planning Permission or as otherwise stated in this Deed) and otherwise the matters contained herein shall take effect on the date of this Deed.

5. **COVENANTS**

5.1 The Owner hereby covenants to the Council so as to bind its respective interests in the Property to observe and perform the planning obligations contained in Schedules 1 to 10 inclusive to the intent that this covenant shall be enforceable against any person deriving title under it or them or their interests in the Property

6. **MISCELLANEOUS**

6.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Deed is not made for the benefit of nor shall any of its provisions be enforceable by any person other than:

- (a) the parties to this Deed;
- (b) any persons deriving their title to all or part of the Property under or from the Owner; and
- (c) any body succeeding to the statutory duties and functions of the Council as the local planning authority.

6.2 ~~I~~nssofar as any clause or clauses of this Deed are found to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect or impair the validity legality or enforceability of the remaining provisions of this Deed

6.3 ~~T~~his Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.4 ~~T~~he Owner, and its successors in title and assigns to the Property shall not 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 Property or in the part of the Property in respect to which the breach relates but without prejudice to any liability for any subsisting breach arising prior to parting with such interest and for the avoidance of doubt the benefit of any covenant or the reserving of any easement shall not be an interest for these purposes

6.5 ~~N~~othing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

6.6 ~~N~~one of the parties to this Deed has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another and no collateral agreement exists between the parties

6.7 ~~N~~othing herein contained excludes the liability of any of the parties in relation to fraud

6.8 ~~T~~he burden of each planning obligation given in this Deed binds each and every part of the Owners interest in the Property into whosoever hands it may come

6.9 ~~a~~A planning obligation not to do any act or thing includes an obligation not to cause or permit or suffer that act or thing to be done by another person

- 6.10 This Deed shall be registered as a local land charge by the Council
- 6.11 The Owner shall supply to the Council such information as the Council shall reasonably require from time to time, including the provision of documentary evidence, to verify compliance with the planning obligations contained herein
- 6.12 For the purpose of ensuring due performance of the planning obligations contained in this Deed, the Council, and its officers and all others duly authorised by them may have access to the Property at all reasonable times (and without having to make payment to the Owner or any other third party) to verify compliance with the terms of this Deed
- 6.13 ~~T~~he obligations contained in this Deed shall not be binding upon or enforceable against the following people and their successors in title:
- (a) an individual residential owner or purchaser of any single Dwelling within the Development;
  - (b) any statutory undertaker or public utility company acquiring any part of the Property or interest therein for the purpose of supplying electricity, gas, water, foul, and surface water drainage or telecommunication services;

and in consequence of the release given in this clause 6.13 this Deed may be modified, varied or released without the consent or approval of any such residential owner or occupier, lender or mortgagee, statutory undertaker or public utility company and without them being made party to any document or deed required to effect such modification, variation or release.

## 7. MORTGAGEES OF THE PROPERTY

- 7.1 The First Mortgagee, the Second Mortgagee and the Third Mortgagee acknowledge and declare that this Deed has been entered into by the Cheshunt FC 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 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 Cheshunt FC.

## 8. WAIVER

- 8.1 It is hereby agreed by the parties hereto that failure by the Council at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by any party to this Deed of any of the conditions covenants agreements or obligations of this Deed or any failure or delay by the Council to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Deed or any part thereof or the right of the Council to enforce any provision and any variation of this Deed agreed between the parties and the Council shall not vitiate the remainder of the Deed which shall remain in full force and effect subject to such amendments agreed

9. **OWNERSHIP**

9.1 The Owner warrants that other than set out in the Recitals hereto there are no persons other than the Owner with any interest, legal or equitable, in the Property or any part thereof

10. **INTEREST ON LATE PAYMENT**

10.1 If the Owner fails to pay the Contributions or any other sum payable to the Council under this Deed on the date when such payment falls due then the Owner shall pay the Council interest on such unpaid sum at the rate of 4% per annum above the base rate from time to time of the Bank of England from the date the payment was due to the date of payment

11. **LEGAL COSTS AND MONITORING CHARGE**

11.1 The Developer shall pay in full on the date of this Deed to the Council, its reasonable and proper legal costs together with all reasonable disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed;

12. **EXPERT DETERMINATION**

12.1 Any dispute arising out of the provisions of this Deed may be referred to a person having appropriate qualifications and experience in such matters ('the Expert') for the determination of that dispute provided that the provisions of this Clause 12 shall be without prejudice to the right of any party to seek the resolution of any matter relating to this Deed to the Courts and/or in accordance with Section 106(6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any party to the Courts or to the provisions of Section 106(6) of the 1990 Act for the resolution of any matter arising from the Agreement.

12.2 The Expert shall be appointed jointly by the relevant parties to the dispute (the "Relevant Parties") or in default of agreement by a person nominated by the President on the application of any of the parties.

12.3 The decision of the Expert shall be final and binding upon the Relevant Parties and the following provisions shall apply:

- (a) the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct;
- (b) the Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him/her before making his/her decision;
- (c) the Expert shall be entitled to obtain opinions from others if he/she so wishes;
- (d) the Expert shall make his/her decision within the range of any representations made by the Relevant Parties themselves; and

- (e) the Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment.

**13. STATUTORY POWERS**

For the avoidance of doubt nothing contained in or implied by this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local authority and such rights, powers, duties and obligations under any public or private statute, bye-law, order, regulation or statutory instrument may be as fully and effectively exercised in relation to the Property and the Development or any part of it or in respect of any adjoining or neighbouring land as if the Council had not been a party to this Deed.

**14. GENERAL PROVISIONS**

- 14.1 This Deed is not and shall not operate or be construed as or deemed to be a grant of planning permission for the purposes of Part III of the Act.
- 14.2 Except as herein provided nothing in this Deed confers any approval, consent or permission required from the Council in the exercise of its statutory functions.
- 14.3 Subject to the provisions of Sections 106A and 106B of the Act the terms and conditions of this Deed shall only be capable of being varied by a supplemental agreement executed by the parties hereto or their successors in title.

**15. NOTICES**

- 15.1 Where notice is required to be given under the terms of this Deed such notice must be in writing and signed by or on behalf of the party giving it and must be either delivered personally or sent by pre-paid first class post or recorded delivery to the address and for the attention of the relevant parties as set out at the beginning of this agreement or such alternative address as they may have been notified from time to time.
- 15.2 Any such notice or document will be deemed to have been received:
  - (a) If delivered personally at the time of delivery provided that if delivery occurs before 9:00am on a Working Day the notice will be deemed to have been received at 9:00am on that day and if delivery occurs after 5:00pm on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 9:00am on the next Working Day; or
  - (b) In the case of pre-paid first class or recorded delivery post at 9:00am on the second Working Day after posting.
- 15.3 A notice or document delivered under this Deed shall not be validly given or delivered if sent by email or fax.
- 15.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.



16. **JURISDICTION**

16.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

17. **DELIVERY**

17.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

18. **WARRANTY**

18.1 The Owner hereby warrants to the Council that it has not leased mortgaged charged or otherwise created any interest in the Property at the date of this Deed other than the interests shown at the Land Registry at the date of this Deed

IN WITNESS whereof the parties have each executed this Deed as a Deed the day and year first before written

*[Execution clauses to follow]*

EXECUTED and DELIVERED as a Deed on the Date of this Document

EXECUTED under the Common )  
Seal of )

THE COUNCIL OF THE )  
BOROUGH OF BROXBORNE )

in the presence of: ) \_\_\_\_\_

Authorised Signatory

**SCHEDULE ONE**

**THE PROPERTY**

The land at land at Theobalds Lane, Cheshunt, Herts and shown edged red on Plan 1

## SCHEDULE TWO

### OWNER'S COVENANTS

#### PART 1 - DELIVERY, BOND AND TRIGGERS

The Owner covenants with and undertake to the Council:

1. Not to Commence Development on the Houses until Reserved Matters Approvals in relation to the Club Facilities and that part of the Stadium as shown on drawing [1x] have been approved by the Council
2. Not to Commence Development on the Houses until the Surety has entered into the Bond in relation to the Club Facilities in the Bond Figure (as approved by the Council in writing) and a duly executed copy has been provided to the Council
3. Not to Commence Development on the Apartments until Reserved Matters Approvals in relation to the Commercial Block and that part of the Stadium shown on plan [x] have been approved by the Council
4. Not to Commence Development on the Apartments until the Surety has entered into the Bond in relation to the Commercial Block in the Bond Figure (as approved by the Council in writing) and a duly executed copy has been provided to the Council
5. In the event that the Owner fails to complete the construction of the Commercial Development within a period of five (5) years from the date of Commencement of Development in accordance with the Planning Permission and the provisions of this Schedule then the Council may itself carry out the necessary works to complete the construction of the Commercial Development having first called upon the Surety for the cost to be expended in so doing and the Owner hereby agrees that in such circumstances the Owner hereby grants to the Council its licensees, employees and contractors licence to enter onto the Site and all necessary rights to allow the Council to complete the construction of the Commercial Development
6. Following completion of the delivery of the Commercial Development by the Owner in accordance with the Planning Permission and to the written satisfaction of the Council the Council shall release the Surety from the Bond(s) and shall confirm such release in writing within 20 Working Days of receipt of a written request from the Owner for such release
7. Not to Occupy nor permit or cause Occupation of more than 70% (rounded up to the nearest whole number) of the Houses prior to Completion of the Club House
8. Not to Occupy nor permit or cause Occupation of more than 70% (rounded up to the nearest whole number) of the Apartments prior to Completion of the Stadium and Commercial Block

#### PART 2 - CONTRIBUTIONS

The Owner covenants with the Council as follows:

- 1 to pay the Highways Contribution prior to the Commencement of Development.
2. not to Commence Development until the Highways Contribution has been paid to the Council.

**SCHEDULE THREE**  
**CLAWBACK ON COMPLETION**

**DEFINITIONS**

In this Schedule the following terms have the following meanings:

"Surplus"	Shall be any positive figure calculated in accordance with the Viability Review Methodology
"Viability Assessment"	an open book assessment prepared by or on behalf of the Owner at its own cost with the purpose of determining the viability of the Development at the date the review is undertaken in order to calculate the Surplus which assessment shall be in accordance with the Viability Review Methodology
"Viability Review Methodology"	the methodology set out in Schedule Nine

The Owner covenants with the Council as follows:-

- 1.1 to notify the Council in writing within 5 Working Days of the Occupation of the 163<sup>rd</sup> Dwelling on the Site
- 1.2 Within 20 Working Days of the Occupation of the 163<sup>rd</sup> Dwelling on the Site or within [5] years of Commencement of Development whichever is the earlier to submit to the Council a Viability Assessment for its written approval ;
- 1.3 Within twenty (20) Working Days of receipt of the Viability Assessment the Council shall inform the Owner that it has either approved the Viability Assessment or that it has submitted the Viability Assessment to its professional assessor
- 1.4 The Owner covenants to pay the Council within 10 Working Days of demand the proper and reasonable costs incurred by the Council in obtaining a professional assessment of the Viability Assessment submitted by the Owner to the Council pursuant to paragraph 1.2 above;
- 1.5 If the Council serves notification on the Owner under paragraph 1.3 above the Council shall endeavour to obtain the professional assessment within 20 Working Days of the receipt of the Viability Assessment by the Owner

- 1.6 The Council shall notify the Owner in writing of the outcome of the professional assessment within 10 Working Days of the receipt of the professional assessment under paragraph 1.5 above
- 1.7 If the Council notifies the Owner under paragraph 1.6 that it disputes the Viability Assessment submitted by the Owner pursuant to paragraph 1.2 above the Council and the Owner shall:
- 1.7.1 endeavour to agree the Viability Assessment within a further 20 Working Days (or such other period as agreed between the Parties);
- 1.7.2 failing agreement pursuant to paragraph 1.7.1 above the Council and the Owner hereby agree that any dispute in connection with the Viability Assessment may be referred to the Expert pursuant to Clause 12 of this Deed and the determination of the Expert will be final and binding on the Council and the Owner save in the case of manifest error
- 1.8 If the Viability Assessment produces a Surplus, to pay such sum to the Council within 20 Working Days of the Viability Assessment being agreed or determined in accordance with clause 1.7.2.
- 1.9 In the event that a Surplus is paid to the Council pursuant to paragraph 1.8 above the Council shall expend such Surplus upon the delivery of Affordable Housing in the Borough of Broxbourne or other Planning Obligations

#### SCHEDULE FOUR: CLUBHOUSE AND STADIUM MANAGEMENT SCHEME

In this Schedule the following definitions apply

**“Community Engagement Programme”**

Means a programme run by the Owner which facilitates engagement between Cheshunt FC and the local community

**“Community Use Agreements”**

means agreements between the Council and the Owner which provide for access for local government and parish councils, community clubs and charitable trusts to be made available within the Clubhouse and Stadium and which set out the rates at which such access shall be made available and which may provide for such rates to change from time to time subject to the prior written agreement of the Council and for the avoidance of doubt shall be no lower than the rates charged by the Council at other community facilities within the administrative area of Broxbourne

**“Football Community Engagement Programme”**

Means a programme run by the Owner incorporating opportunities for:

- a) Junior and age grade football teams;
- b) Elderly and walking football teams;
- c) Girls and Ladies football teams; and
- d) disability football teams

**“Clubhouse and Stadium Management Scheme”**

Means a scheme to be submitted to the Council for approval including:

- a. A Community Engagement Programme
- b. A Football Community Engagement Programme
- c. Details of the management plan securing the upkeep of the Clubhouse and Stadium facilities; and
- d. Community Use Agreements for the Clubhouse and Stadium facilities including details of subsidised rates for access to the facilities

1. The Owner covenants with the Council as follows:
  - 1.1 to submit the Clubhouse and Stadium Management Scheme to the Council as part of the Reserved Matters Application for that element of the Development
  - 1.2 not to Occupy the Clubhouse or Stadium until the Clubhouse and Stadium Management Scheme has been approved in writing by the Council (either as part of the relevant Reserved Matters Approval or separately)
  - 1.3 to implement the provisions of the Clubhouse and Stadium Management Scheme (as approved by the Council) from completion of the Clubhouse Facilities and the Stadium and to maintain such provisions for the lifetime of the Commercial Development
  - 1.4 to submit to the Council every three (3) years a written monitoring report which summarises the operation of the Clubhouse and Stadium Management Scheme and proposes any amendments that are required to the same for approval by the Council and thereafter to implement any agreed amendments

- 1.5 to maintain the Club House Facilities and the Stadium in good order in accordance with the approved Clubhouse and Stadium Management Scheme for the lifetime of Commercial the Development
- 1.6 to permit the Council access to the Clubhouse Facilities and Stadium upon receipt of not less than 48 hours' notice in writing to allow the Council to inspect the compliance of the terms of the approved Clubhouse and Stadium Management Scheme PROVIDED THAT access will be taken between the hours of 09.00 and 18.00 on a Working Day.
- 1.7 The requirements of the Clubhouse and Stadium Management Scheme and access to the Clubhouse Facilities and Stadium will at all times be subject to priority access for Cheshunt FC's own use.



## SCHEDULE FIVE: COMMERCIAL BLOCK MANAGEMENT SCHEME

In this Schedule the following definitions apply:

**"Commercial Block Management Scheme"**

means a scheme to be submitted to the Council for approval including:

- a. Details of the provision of a minimum of 1000sqm of community facility(ies) to be delivered within the Commercial Block for uses within Use Classes E(d-f) F1 and F2(b-d) of the Town and Country Planning (Use Classes) Order 1987 (as amended) in the Commercial Block and made available to users including local government and parish councils, community clubs and charitable trusts; and
  - b. Details of the management plan securing the upkeep of the Commercial Block
2. The Owner covenants with the Council as follows:
- 2.1 To submit the Commercial Block Management Scheme to the Council as part of the Reserved Matters Application for that element of the Development
  - 2.2 Not to Commence Development on the Commercial Block until the Commercial Block Management Scheme has been approved in writing by the Council (either as part of the relevant Reserved Matters Approval or separately)
  - 2.3 to implement the provisions of the Commercial Block Management Scheme (as approved by the Council) from completion of the Commercial Block and to maintain such provisions for the lifetime of the Commercial Block
  - 2.4 to Occupy the community facility within the Commercial Block for purposes within Use Classes E(d-f) F1 and F2(b-d) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purposes within Use Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)
  - 2.5 to maintain the Commercial Block in good order in accordance with the approved Commercial Block Management Scheme for the lifetime of the Commercial Block

SCHEDULE SIX: DRAINAGE CONNECTION

- 1.1 The Owner shall use Reasonable Endeavours to grant the Drainage Connection Rights to the owners of the Sports Pitches (and evidence of the use of any such Reasonable Endeavours shall be provided to the Council upon receipt of a written request for the same) and the Owner shall not levy any charge or ransom on the owners of the Sports Pitches in relation to the grant of such rights and/or licence PROVIDED ALWAYS that the Owner shall be under no obligation to grant any such rights/licence where the same will prejudice, affect or otherwise frustrate the Owner's ability to construct or deliver the Development including (but not limited to) the Owner's ability to construct, install or deliver any of the drainage elements proposed for the Development as shown for indicative purposes only on drawing number [redacted] appended hereto

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**SCHEDULE SEVEN  
RESIDENTIAL DEVELOPMENT MANAGEMENT SCHEME**

- 1.1 The Owner shall not Occupy or allow Occupation of any Dwelling comprising the Residential Development unless and until the Residential Development Management Plan has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed).
- 1.2 The Management Company shall be operational prior to the issue of the Certificate of Practical Completion.
- 1.3 The Owner shall complete the laying out of the Managed Areas within the Residential Development in accordance with the Residential Development Management Plan and the details approved pursuant to the conditions attached to the outline Planning Permission prior to Occupation of the more than 90% of the Dwellings to be constructed as part of the Development
- 1.4 Following completion of the laying out of the Managed Areas within the Residential Development:
  - 1.4.1 the Owner shall serve upon the Council a Certificate of Practical Completion confirming that the Managed Areas have been completed in accordance with the approved Residential Development Management Plan and the details approved pursuant to the conditions attached to the Planning Permission and shall provide written evidence that the Management Company is operational; and
  - 1.4.2 the Owner shall maintain the Managed Areas within the Residential Development in accordance with the approved Residential Development Management Plan to the reasonable satisfaction of the Council throughout the Maintenance Period
- 1.5 On the expiration of the Maintenance Period the Owner shall serve upon the Council a Certificate of Final Completion in respect of the Managed Areas in the Residential Development.
- 1.6 The Owner shall manage or procure the maintenance of the Managed Areas in the Residential Development in accordance with the approved Residential Development Management Plan until such time as the land comprising such Managed Areas is transferred to the Management Company

## SCHEDULE EIGHT

### COMMERCIAL DEVELOPMENT MANAGEMENT SCHEME

The Owner covenants with the Council that:

- 1.1 The Owner shall not Occupy or allow Occupation of any element or Phase unless and until the Commercial Development Management Plan relevant to that element or Phase has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed).
- 1.2 The Management Company shall be operational prior to the issue of the Certificate of Practical Completion on any Phase.
- 1.3 The Owner shall complete the laying out of the Managed Areas within the relevant Phase in accordance with the Commercial Development Management Plan and the details approved pursuant to conditions attached to the outline Planning Permission prior to Occupation of any element or Phase.
- 1.4 Following completion of the laying out of the Managed Areas within any Phase:

  - 1.4.1 the Owner shall serve upon the Council a Certificate of Practical Completion confirming that the Managed Areas within the Commercial Development have been completed in accordance with the approved Commercial Development Management Plan and the details approved pursuant to the conditions attached to the Planning Permission and shall provide written evidence that the Management Company is operational; and
  - 1.4.2 the Owner shall maintain the Managed Areas within the Commercial Development in accordance with the approved Commercial Development Management Plan to the reasonable satisfaction of the Council throughout the Maintenance Period
- 1.5 On the expiration of the Maintenance Period the Owner shall serve upon the Council a Certificate of Final Completion in respect of the Managed Areas within the Commercial Development.
- 1.6 The Owner shall manage or procure the maintenance of the Managed Areas in the Commercial Development in accordance with the approved Commercial Development Management Plan until such time as the land comprising the Managed Areas within the Commercial Development is transferred to the Management Company

**SCHEDULE NINE**  
**VIABILITY ASSESSMENT METHODOLOGY**

Balance calculation	<p>D = A - (B+C)            Where A is the Development Value            Where B is the Land Value            Where C is the Development Costs            Where D is the Developer's Profit</p>
Surplus	<p><u>Means:</u></p> <ol style="list-style-type: none"> <li>1. <u>The Council position ("the Council position") on the calculation of the surplus is as follows:</u> <ul style="list-style-type: none"> <li>- 50% of the Balance where Developer's Profit is between (a) 3.5% or (b) 6.09% to 15% and 75% where Developer's Profit is above 15% to a cap of Ten Million Four Hundred and Seventy Nine Thousand and fifteen pounds (£10,479,015) as required by the Planning Obligations</li> </ul> </li> <li>2. <u>The Appellant's position ("the Appellant's position) on the calculation of the surplus is as follows:</u> <ul style="list-style-type: none"> <li>- 50% of the Balance where Developer's Profit is between (a) 9.45% or (b) 15% to 17.5% and 75% where Developer's Profit is above 17.5% to a cap of Ten Million Four Hundred and Seventy Nine Thousand and fifteen pounds (£10,479,015) as required by the Planning Obligations</li> </ul> </li> <li>3. <u>The methodology for the Surplus shall be carried out in accordance with either (a) or (b) of the Council's position or (a) or (b) of the Appellant's position in accordance with the Inspector's determination in the Appeal</u></li> </ol> <p><u>The above profit figures are all based on profit on gross development value.</u>  <del>50% of the Balance where Developer's Profit is between [X]% to [X]% and 75% where Developer's Profit is above [X]% to a cap of [£X million] as required by the Planning Obligations</del></p>
What will any review take into account	<p><b>Development Value</b></p> <p>(1) Actual sales values of any sold Dwellings</p>

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	<p>(2) Estimated sales values of any un-sold Dwellings at the point of review</p> <p>(3) Actual capitalised value of any sold or let commercial elements of the Development</p> <p>(4) Estimated capitalised value of any unsold/un-let commercial elements of the Development</p> <p>(5) Actual or estimated capitalised value of the ground rent investment</p> <p>(6) Enhanced capitalised value of Cheshunt FC Club House and Stadium</p> <p><b>Development Costs</b></p> <p>(1) All costs are actual costs necessarily and reasonably incurred or forecast to be incurred in undertaking delivering the Development and such costs shall be evidenced by inter alia appointment documents; invoices; fee arrangement; construction contracts; insurance policies; brokerage fee arrangements; sales agreements; land registry transfer forms; planning agreements; deeds of release; bank statement; financial statements; annual accounts; tax computations; loan agreements and any other reasonably evidenced expenditure required in delivering and undertaking the Development</p> <p>(2) Costs of preparing and securing planning permission;</p> <p>(3) Site investigation costs</p> <p>(4) Construction costs</p> <p>(5) Third party costs (as agreed between the Parties)</p> <p>(6) Professional fees</p> <p>(7) Finance costs</p> <p>(8) Post practical completion costs;</p> <p>(9) Building regulation fees</p> <p>(10) Insurances</p> <p>(11) NHBC costs</p> <p>(12) Residential sales and marketing costs</p> <p>(13) Commercial sales and marketing costs</p> <p>(14) Non-recoverable VAT</p> <p>(15) Any other costs that are agreed between the Parties</p> <p><b>Land Value</b></p> <p>The figure as agreed between the Council and Cheshunt FC for the purchase of the Site</p> <p><b>Enhanced Capitalised Value of Cheshunt FC Club Facilities and Stadium</b></p>
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	<p>The independently assessed increase in value of the Cheshunt FC Facilities (being the Club Facilities and the Stadium) to be assessed on the basis of:</p> <p><math>C = A - B</math></p> <p>Where:</p> <p>A= the value of the Club Facilities and Stadium on the date of the assessment B = the value of the existing clubhouse and stadium at the date of this deed C = the enhanced value of the Clubhouse Facilities and Stadium</p>
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**SCHEDULE TEN  
FIRE HYDRANTS**

The Owner covenants with the Council with regard to the water supply to the Development:

- 1.1 to ensure that the Water Scheme provided by the Owner for the Development incorporates fire hydrants in accordance with BS 750 (2012) as reasonably and properly required by the Fire and Rescue Service
- 1.2 to prepare and submit the Water Scheme to the Fire and Rescue Service for its written approval prior to the Commencement of Development
- 1.3 to construct and provide at no cost to the Fire and Rescue Service the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Fire and Rescue Service in writing of the date upon which each and every fire hydrant becomes operational and ready to be used for the purposes of fire-fighting by the Fire and Rescue Service
- 1.4 once operational to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take place upon the issue of a certificate of satisfaction by the Chief Fire Officer the issue of which shall not be unreasonably delayed PROVIDED THAT such certificate shall not be issued prior to the issue by the Director of Environment at Hertfordshire County Council of any certificate of maintenance for the highways in which the fire hydrants are located
- 1.5 to ensure that each Dwelling can be served by a fire hydrant which is operational and ready to be used for the purpose of fire-fighting by the Fire and Rescue Service prior to Occupation of the Dwelling
- 1.6 not to Occupy or cause or permit Occupation of any building forming part of the Development including any Dwelling until such time as it is served by a fire hydrant that is operational and ready to be used for the purpose of fire-fighting by the Fire and Rescue Service
- 1.7 to address any notice to be given to the Fire and Rescue Service to the Water Services Officer, Fire and Rescue Service, 9 Merchant Drive, Mead Lane, Hertford, SG13 7BH Telephone 01992 507638



**SCHEDULE ELEVEN  
TRAVEL PLAN**

The Owner covenants with the Council:

- 1.1 to submit to the Council for written approval a draft Travel Plan no less than three (3) months prior to first Occupation of the Development
- 1.2 not to Occupy or permit or allow the Occupation of the Development until the draft Travel Plan has been submitted to and approved in writing by the Council
- 1.3 to implement the Travel Plan as approved by the Council from the first Occupation of the Development
- 1.4 to submit to the Council on an annual basis on the anniversary of the first Occupation of the Development the Travel Plan Monitoring Report and continue to do so for the lifetime of the Development
- 1.5 to appoint the Travel Plan Co-Ordinator, such person to be approved in writing by the Council not less than three (3) months prior to the first Occupation of the Development

**APPENDIX 1**

**PLAN 1**

**APPENDIX 2**

**PLAN 2**

**APPENDIX 3**

**PLAN 3**

**Sports Pitches and Drainage Connection drawing**

APPENDIX 4

Draft Bond