

**DATE: 2021**

---

**Agreement relating to (inter alia) Section 106 of the Town and Country Planning Act 1990 in relation to the development at the Epsom Hospital Site, Dorking Road, Epsom, KT18 7EG (ref.19/01722/FUL)**

---

Between

**(1) EPSOM AND EWELL BOROUGH COUNCIL**

**(2) SURREY COUNTY COUNCIL**

**(3) SENIOR LIVING URBAN (EPSOM) LIMITED**

and

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

---

CMS Cameron McKenna Nabarro Olswang LLP

Cannon Place  
78 Cannon Street  
London EC4N 6AF  
T +44 20 7367 3000  
F +44 20 7367 2000  
cms.law

## TABLE OF CONTENTS

1.	Interpretation.....	1
2.	Statutory powers .....	5
3.	Land bound / Liability .....	5
4.	Conditionality .....	5
5.	Developer and Trust covenants.....	6
6.	Council's covenants.....	6
7.	County Council covenants .....	6
8.	Further Section 73 Consent.....	6
9.	Release and lapse .....	6
10.	Local land charge.....	7
11.	No fetter on discretion .....	7
12.	Severability .....	7
13.	Legal costs .....	7
14.	Contracts (Rights of Third Parties) Act 1999 .....	7
15.	Notices .....	7
16.	Interest on late payments .....	8
17.	VAT .....	8
18.	Mortgagee or chargee liability .....	8
19.	Dispute resolution .....	8
20.	Waiver.....	9
21.	Counterparts.....	9
22.	Governing Law and Jurisdiction.....	9
Schedule 1 Developer and Trust Covenants to the Council .....		10
1.	Key Worker Units .....	10
2.	Travel Plan.....	10
3.	Landscape Ecological Management Plan .....	10
4.	Employment and Skills Plan .....	10
5.	Monitoring Contribution.....	10
6.	Woodcote Millennium Green Contribution .....	10
7.	Nursery Places .....	10
Schedule 2 Developer and Trust Covenants to the County Council .....		11
Schedule 3 Care Units Occupancy Criteria .....		13
1.	Interpretation.....	13
Developer's Covenants to the Council .....		14
Schedule 4 Affordable Housing .....		1
1.	Interpretation.....	1
2.	Affordable Housing Contribution .....	2
3.	Provision of the Affordable Housing Units .....	2
4.	Operation of the Affordable Housing Units.....	2

5. Management of the Affordable Housing Units.....3  
6. Marketing of the Affordable Housing Units .....3  
7. Mortgagees and Chargees .....3  
Schedule 5 Council's and County Council's covenants .....5

**PARTIES:**

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

**RECITALS:**

- (A) The Council is the local planning authority for the purposes of section 106 of the 1990 Act for the area within which the Land and the Trust Land is situated.
- (B) The County Council is the local highway and transport authority for the area within which the Land and the Trust Land is situated.
- (C) The Developer is the freehold owner of the land known as land on the south side of Epsom General Hospital, Dorking Road, Epsom KT18 7EG within the land edged red on the Location Plan and registered at H.M Land Registry with absolute title under title number SY860843.
- (D) The Trust is the freehold owner of the Trust Land.
- (E) The Developer submitted the Application to the Council.
- (F) On 23 November 2020 the Council issued a decision notice refusing planning permission pursuant to the Application.
- (G) On 29 March 2021 the Developer submitted the Appeal in respect of the Council’s refusal of the Application.
- (H) The Council is satisfied that the Development and the planning obligations set out herein would satisfy the tests in Regulation 122 of the CIL Regulations.
- (I) The Developer has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Agreement.

**IT IS AGREED:**

**1. INTERPRETATION**

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

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

“**Appeal**” means the appeal (ref: [TBC]) submitted by the Developer to the Planning Inspectorate pursuant to section 78 of the 1990 Act against the Council’s decision to refuse permission for the Application;

“**Application**” means the application for the Development submitted by or on behalf of the Developer to the Council to which the Council has allocated reference number 19/01722/FUL;

“**Bus Infrastructure Contribution**” means the sum of £[X] (Index Linked) to be paid by the Developer to the County Council in accordance with Part 1 of Schedule 2 to this Agreement for the improvements to the Bus Shelters including the provision of kerbing at an accessible height and real-time passenger information facilities;

“**Bus Shelters**” means [*precise bus stops to be confirmed by the parties*] located along the A24 Dorking Road and Woodcote Green Road, as indicated by the plan attached to this Agreement at Annex 1 and marked ‘Bus Shelters Plan’;

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

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

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

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

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

“**Car Club Vehicle**” means the vehicle owned or provided by the Car Club Provider for the Car Club;

“**Car Free Access Route**” means the car free access route within the Land as shown on the plan attached to this Agreement at Annex 1 and labelled “Car Free Access Route Plan”;

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

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

“**Development**” means the demolition of existing hospital buildings accommodation block and associated structures and redevelopment of the site to provide a new care community for older people arranged in two buildings, comprising 302 to 308 care residences, 8 to 12 care apartments and 26 to 30 care suites providing transitional care, together with ancillary communal and support services Use Class C2, 24 key worker units Use Class C3, children’s nursery Use Class D1 as well as associated back of house and service areas, car and cycle parking, altered vehicular and pedestrian access, landscaping, private amenity space and public open space;

**“Employment and Skills Plan”** means the plan to be submitted to the Council for approval in accordance with Part 4 of Schedule 1 of this Agreement [*Council to confirm the details to be included within this plan*];

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

**“Framework Travel Plan”** means a plan dated December 2019 and prepared by Mayer Brown which was submitted to the Council in support of the Application;

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

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

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

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

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

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

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

**“Land”** means the land edged red on Location Plan registered at HM Land Registry with title number SY860843;

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

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

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

**“Monitoring Contribution”** means the sum of £[X] to be paid by the Developer to the Council in accordance with Part 5 of Schedule 1 for the purpose of monitoring compliance with the obligations contained in this Agreement;

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

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

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

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

**“Permission”** means full planning permission (subject to conditions) to be granted by the Council for the Development pursuant to the Appeal if the Appeal is successful;

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

**“Travel Plan”** means the plan to be submitted to the Council for approval in accordance with Part 2 of Schedule 1 of this Agreement being a plan containing substantially the same measures and obligations as the Framework Travel Plan;

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

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

**“Woodcote Millennium Green Contribution”** means the sum of £25,500 to be paid by the Developer to the Council in accordance with Part 6 of Schedule 1 for the purpose of ongoing repairs and maintenance of the Woodcote Millennium Green;

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

1.2 References in this Agreement to the “Developer” shall include their respective successors in title to the Land and their assigns.

- 1.3 References in this Agreement to the “Council” shall include any successor to its functions as local planning authority.
- 1.4 References in this Agreement to the “County Council” shall include any successor to its functions as local highway and transport authority.
- 1.5 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.6 The clause headings in this Agreement are for convenience only and do not form part of the Agreement.
- 1.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.
- 1.8 References to the singular shall include the plural and vice versa.

## **2. STATUTORY POWERS**

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

## **3. LAND BOUND / LIABILITY**

- 3.1 The Land is bound by the obligations in this Agreement.
- 3.2 The Trust agrees to the Trust Land being bound by the obligations in this Agreement and obligations in this Agreement on the part of the Developer shall bind the Trust as the freehold owner of the Trust Land.
- 3.3 The obligations under this Agreement shall not be binding on nor enforceable against:
  - 3.3.1 any statutory undertaker which acquires any part of the Land or the Trust Land or an interest in it for the purposes of its statutory undertaking;
  - 3.3.2 any individual owner, occupier or tenant of any part of the Development or any successor in title or any mortgagee or charge to such person; and
  - 3.3.3 any future mortgagee or chargee of the Land or the Trust Land subject to clause 18 of this Agreement.

## **4. CONDITIONALITY**

- 4.1 The obligations in this Agreement (save for the covenant in clause 14) are unless otherwise specified conditional upon:
  - 4.1.1 the grant of the Permission; and
  - 4.1.2 Implementation of the Permission.



**5. DEVELOPER AND TRUST COVENANTS**

5.1 The Developer and the Trust covenant with the Council to observe and perform the covenants on its part contained in Schedules 1, 3 and 4.

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

**6. COUNCIL'S COVENANTS**

The Council covenants with the Developer that it will observe and perform the covenants on its part contained in Schedule 5.

**7. COUNTY COUNCIL COVENANTS**

The County Council covenants with the Developer that it will observe and perform the covenants on its part contained in Schedule 5.

**8. FURTHER SECTION 73 CONSENT**

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

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

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

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

**9. RELEASE AND LAPSE**

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

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

9.2.1 the Permission shall expire without having been Implemented; or

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

9.2.3 the Permission is quashed following a successful Legal Challenge.

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

**10. LOCAL LAND CHARGE**

- 10.1 This Agreement is a local land charge and the Council shall register it as such as soon as practicable after the completion of this Agreement.
- 10.2 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall cancel all the entries made in the register of local land charges in respect of this Agreement as soon as possible.

**11. NO FETTER ON DISCRETION**

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

**12. SEVERABILITY**

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

**13. LEGAL COSTS**

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

**14. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

**15. NOTICES**

- 15.1 The Developer covenants with the Council and the County Council to notify the Council and the County Council at least 7 Working Days before the occurrence of each of the following:
- 15.1.1 Implementation of Development; and
  - 15.1.2 Occupation of the Development.
- 15.2 Any notices required to be served by one party on another under this Agreement shall be in writing and served by special or recorded delivery or by hand in the following manner (or such other manner as notified by the relevant party to the other parties to this Agreement from time to time):
- 15.2.1 on the Council at the address shown above marked "For the attention of the Chief Executive";
  - 15.2.2 on the County Council at the address shown above marked "For the attention of the Infrastructure Agreements Manager"; and

15.2.3 on the Developer at One Coleman Street, London, England EC2R 5AA marked “For the attention of the Development Manager” and bearing reference “Epsom Hospital S106 Agreement”.

## **16. INTEREST ON LATE PAYMENTS**

Any payment due from the Developer under this Agreement which is not paid on the due date shall be payable with interest at the base lending rate from time to time of the Bank of England from the due date until date of payment.

## **17. VAT**

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

## **18. MORTGAGEE OR CHARGEES LIABILITY**

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

## **19. DISPUTE RESOLUTION**

19.1 The parties agree that any differences and questions which arise between the parties in connection with this Agreement may be referred for determination by an independent person (an Expert) in accordance with the following provisions:

19.1.1 where such dispute relates to the construction of this Agreement or any other document referred to herein it shall be referred to a lawyer agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Law Society;

19.1.2 where such dispute relates to the acceptability or otherwise of a scheme submitted it shall be referred to a Chartered Town Planner agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Royal Town Planning Institute; or

19.1.3 where such dispute relates to the valuation of property and/or the viability of the Development it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Royal Institution of Chartered Surveyors.

19.2 Notice in writing of the appointment of an Expert pursuant to this Clause 19 shall be given by the Expert to the parties and he shall invite each to submit within a specified period (which will not exceed three weeks) any written representations each wishes to make to him and any submissions shall be provided to the parties with an invitation to respond within a specified period (not exceeding two weeks).

- 19.3 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.
- 19.4 The Expert shall give notice in writing of his decision with reasons to the parties within six weeks of his appointment or within such extended period as the parties may together allow.
- 19.5 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.
- 19.6 If for any reason the Expert fails to make a decision and give notice in accordance with Clauses 19.2 to 19.3 any party may apply to the President or appointed deputy for the time being of the Law Society of England and Wales, Royal Town Planning Institute or Royal Institution of Chartered Surveyors for a substitute to be appointed in his place.
- 19.7 Each party shall bear its own costs save that the fees of the Expert shall be in the Expert's award.
- 19.8 Nothing in this Clause shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Agreement.
- 19.9 In the event of delays on the part of the Expert beyond the times specified above the parties may make representations to a solicitor appointed by the President for the time being of the Law Society of England and Wales and if in the opinion of the solicitor appointed there shall have been unreasonable delay the solicitor shall be entitled to dismiss the Expert and appoint a new Expert in his place and notwithstanding the foregoing the parties shall in any event have a right to require such replacement if the decision of the Expert is not made within three months of their appointment.

## **20. WAIVER**

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

## **21. COUNTERPARTS**

- 21.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **22. GOVERNING LAW AND JURISDICTION**

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

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

**SCHEDULE 1**  
**DEVELOPER AND TRUST COVENANTS TO THE COUNCIL**

**1. KEY WORKER UNITS**

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

1.1.1 let to or occupied by Key Workers only; and

1.1.2 let at the Key Worker Rent.

**2. TRAVEL PLAN**

2.1 The Developer covenants with the Council to:

2.1.1 submit the Travel Plan to the Council for its approval before Occupation of the Development;

2.1.2 implement the Travel Plan as approved pursuant to paragraph 2.1.1 from Occupation of the Development; and

2.1.3 comply with the Travel Plan for five years from the date of its implementation pursuant to paragraph 2.1.2.

**3. LANDSCAPE ECOLOGICAL MANAGEMENT PLAN**

3.1 The Developer covenants with the Council to:

3.1.1 submit the Landscape Ecological Management Plan to the Council for its approval prior to Occupation of the Development;

3.1.2 implement the Landscape Ecological Management Plan in accordance with its terms as approved pursuant to paragraph 3.1.1 from Occupation of the Development; and

3.1.3 comply with the Landscape Ecological Management Plan for five years from the date of its implementation pursuant to paragraph 3.1.2.

**4. EMPLOYMENT AND SKILLS PLAN**

4.1 The Developer covenants with the Council to:

4.1.1 submit the Employment and Skills Plan to the Council for its approval prior to Implementation of the Development; and

4.1.2 implement the Employment and Skills Plan as approved pursuant to paragraph 4.1.1 from Implementation of the Development.

**5. MONITORING CONTRIBUTION**

5.1 The Developer covenants with the Council to pay the Monitoring Contribution prior to Implementation of the Development.

**6. WOODCOTE MILLENNIUM GREEN CONTRIBUTION**

6.1 The Developer covenants with the Council to pay the Woodcote Millennium Green Contribution prior to Occupation of the Development.

**7. NURSERY PLACES**

7.1 [*Detail to be discussed between the Developer and the Council*]

**SCHEDULE 2**  
**DEVELOPER AND TRUST COVENANTS TO THE COUNTY COUNCIL**

**1. BUS INFRASTRUCTURE CONTRIBUTIONS**

- 1.1 The Developer covenants to pay to the County Council the Bus Infrastructure Contribution prior to Occupation of the Development.

**2. TRAVEL PLAN AUDIT CONTRIBUTION**

- 2.1 The Developer covenants to pay to the County Council the Travel Plan Audit Contribution prior to Occupation of the Development.

**3. CAR CLUB AND CAR CLUB MEMBERSHIP OFFER**

- 3.1 The Developer covenants with the County Council to:
- 3.1.1 submit to and obtain the written approval of the County Council of the Car Club Scheme prior to Implementation (or such timescale as otherwise agreed in writing between the Developer and the County Council);
  - 3.1.2 submit to and obtain the written approval of the County Council of the details of the proposed Car Club Provider prior to Occupation of the Care Units;
  - 3.1.3 implement the Car Club Scheme prior to Occupation of the Care Units;
  - 3.1.4 to make the Car Club Membership Offer available to the first Occupier of each Care Unit; and
  - 3.1.5 to ensure that the Car Club of the approved Car Club Provider is provided for use by Occupiers of the Care Units and residents of the wider community for a continuous period from the date of Occupation and ending no earlier than three years following the date of Occupation of the Care Units.

**4. CAR CLUB PARKING SPACE**

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

**5. CAR FREE ACCESS ROUTE**

- 5.1 The Developer covenants with the County Council to:

- 5.1.1 provide the Car Free Access Route prior to Occupation of 50% of the Care Units.
- 5.1.2 maintain the Car Free Access Route for the lifetime of the Development.
- 5.1.3 keep the Car Free Access Route open and accessible to the public for the lifetime of the Development SUBJECT TO any or all of the following measures as the Developer considers appropriate:
  - (a) closure for 24 hours as is necessary to assert rights of proprietorship preventing public rights from coming into being by means of prescription or other process of law;
  - (b) closure or temporary closure for carrying out construction works or maintenance, repair, cleaning, renewal or other works to any part of the Land immediately adjacent to the Car Free Access Route;
  - (c) temporary closure of such part of the Car Free Access Route as is required for the purposes of maintenance, repair, cleaning, renewal or resurfacing works;
  - (d) temporary closure of such part of the Car Free Access Route as is required for the purposes of carrying out works of construction on the Land;
  - (e) temporary closure of such part of the Car Free Access Route as is required in the case of an emergency creating a danger to public safety;
  - (f) any lawful requirements of the police or any other competent authority; and
  - (g) closure or temporary closure for any other purpose as may be agreed in advance in writing with the Council.

**SCHEDULE 3**  
**CARE UNITS OCCUPANCY CRITERIA**

**1. INTERPRETATION**

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

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

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

“**Personal Care**” means the services as set out in Appendix [●] which shall be provided by the Service Provider;

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

“**Minimum Specialist Design Features**” means the minimum specialist design features as set out in Appendix [●];

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

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

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

“**Village Transport Services**” means the village transport services as set out in Appendix [●];

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

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



## **DEVELOPER'S COVENANTS TO THE COUNCIL**

- 1.1 The Care Units will not be occupied by anyone other than a Qualifying Person or the spouse, cohabitee or dependant of that Qualifying Person provided that in the event of the death of a Qualifying Person, the spouse, cohabitee or dependant of that Qualifying Person is permitted to remain living within the Care Unit for as long as they so wish, irrespective of their age or requirement for the Minimum Care Package.
- 1.2 The Care Units will not be used for Class C3 residential use under the Town and Country Planning Use Classes Order 1987 as at the date of this Agreement.
- 1.3 The Development will incorporate at least the Minimum Specialist Design Features.
- 1.4 No more than 75% of the Care Units shall be Occupied until the Village Transport Services are in operation and available.

## APPENDIX 1, SCHEDULE 3

### PERSONAL CARE

**Personal Care** includes any of the following:

- (a) the wellbeing coordinator to organise and ensure the provision of house-keeping, property maintenance and ensure that personal affairs are kept in order;
- (b) time spent with the wellbeing coordinator to manage and arrange the delivery of prescription, medication or food services specific to the individual needs;
- (c) time spent with a Wellbeing Team member to organise and facilitate visiting clinical care specialist or allied health professionals;
- (d) time spent with the wellbeing coordinator to plan and arrange domestic assistance which could include cleaning, laundry and other domestic support;
- (e) visits by registered nurses to provide nursing care and administer medications and general clinical support;
- (f) wellbeing checks, such as blood pressure and other health care indicators;
- (g) advice on health, including nutrition and other foundations of wellbeing, including physical exercise;
- (h) organised rehabilitation, following a hospital visit or health event;
- (i) personal care assistance, for example help with mobilising, bathing, going to the toilet, dressing eating or drinking;
- (j) use of the transport services for trips out of the care community, which can be pre-arranged via the wellbeing coordinator; or
- (k) advice, encouragement and supervision relating to the above activities.

Including access to:

- (a) a 24-hour emergency response system which will:
  - (i) provide attendance at residence if required;
  - (ii) provide comfort, reassurance and peace of mind to residents; and
  - (iii) facilitate/greet/liaise with emergency services if called.
- (b) the Wellbeing Team;
- (c) property and garden maintenance;
- (d) a full range of support personnel, who undertake housekeeping, property maintenance, personal affairs, arranging and facilitating external visits;
- (e) domestic assistance which could include cleaning, laundry and other domestic support;
- (f) communal amenities;
- (g) management and security;
- (h) the activities and events team who coordinate activities for residents to encourage engagement within the community and the surrounding area. Activities may include, weekly art and music classes, weekly games events, monthly cultural excursions, weekly shopping trips and gardening clubs;

- (i) a range of daily group exercise class;
- (j) 3 cooked meals a day from a fully equipped and staffed restaurant. Meals can be provided within the Guild restaurant and are also able to be delivered to individual Care Units. Light refreshments will also be offered within the reading room/cafe. Personalised catering can also be provided for those with higher care needs; or
- (k) Transportation coordination, a range of transportation options will be available to residents, including optional shuttle service and valet parking support.

### **MINIMUM SPECIALIST DESIGN FEATURES**

**Communal Facilities** to include the following:

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

Care Units to include the following:

- (a) An emergency call system;
- (b) Lift access to upper floors;
- (c) Maximised Natural Daylight by maximising windows doors and balconies, in number and size;
- (d) Kitchen work tops and wall cupboards lowered to a reduced height;
- (e) Ovens, microwaves, fridges and freezers installed at a suitable height to avoid bending down or stretching up to access them;
- (f) Electric hobs for cooking with isolator switch to reduce the risk of fire or burns;
- (g) WC seat high, positioned higher to allow for increased mobility;

- (h) Washbasins installed at a suitable height for wheelchair use;
- (i) Shower designs that aid access whilst preventing water spreading to bathroom floors;
- (j) Bathrooms designed to have the capability for grab rails or specific equipment to be installed as and when may be required by the resident, to meet their specific needs; and
- (k) A technology platform that offers organisational and communication functions, with a health and wellbeing focus on physical, emotional and cognitive support programs. Design standards will all be in accordance with Part M of the Building Regulations.

## **VILLAGE TRANSPORT SERVICES**

### **Village Transport Service**

A range of transport services shall be made available within the Development, including:

- (a) Car Club offering access to a shared Car Club Vehicle for residents of the Care Units who may not wish to use their own car.
- (b) Valet parking services to aid in car parking and deliveries.
- (c) Shuttle service, providing transport options outside of the community offering day trips, attending appointments etc.
- (d) Disabled access transport services.

**SCHEDULE 4**  
**AFFORDABLE HOUSING**

**1. INTERPRETATION**

1.1 In this Schedule 4 to the Agreement, unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

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

“**Affordable Housing Contribution**” means a sum equivalent to the open market value (subject to the obligations and restrictions contained in this Schedule 4) of the relevant Affordable Housing Units calculated in accordance with [*methodology to be confirmed*] and capped at a maximum of £3,500,000 in total (with no indexation);

“**Affordable Housing Units**” means 21 1-bed Guild Living Residences in the form as follows:

- i. 16 affordable rented units to be rented at 80% of the local market rental levels of C2; and
- ii. 5 shared ownership units to be sold at 75% of the open market C2 valuation of the unit

“**Dwellings**” means the Care Units and the Affordable Housing Units;

“**Market Care Units**” means the Care Units other than the Affordable Housing Units;

“**Marketing Programme**” means a programme for the marketing of the Affordable Housing Units to be submitted to the Council for approval in accordance with paragraph 5 of this Schedule 4;

“**Practical Completion**” means in relation to the Affordable Housing Units within the Development substantial completion to a stage where the Affordable Housing Units are fit for use and Occupation and “Practically Complete” or “Practically Completed” shall be construed accordingly;

“**Protected Tenant**” means any tenant who has:

- i. exercised the right to buy in respect of an Affordable Housing Unit; or
- ii. been granted or is the leaseholder of a shared ownership lease by a Registered Provider (or similar arrangement) and who has subsequently purchased from the Registered Provider all remaining shares.

“**Registered Provider**” means a registered provider of social housing as defined in section 80 of the Housing and Regeneration Act 2008 who is registered with the Regulator of Social Housing pursuant to section 111 of the Housing and Regeneration Act 2008 and has not been removed from the register and who has been approved by the Council;

“**Single Residential Management Company**” means a single legal entity which may be a Registered Provider and which shall be responsible for the day to day management of all of the Dwellings within the Development which shall include all Care Units and all Affordable Housing Units.

1.2 The definitions set out in clause 1.1 to this Agreement also apply in this Schedule 4.

## **2. AFFORDABLE HOUSING CONTRIBUTION**

- 2.1 If within six months of the Permission the Council notify the Developer in writing that the Affordable Housing Units are no longer required then:
- 2.1.1 The obligations in this Schedule (other than this paragraph 2) shall not apply or bind the Land; and
- 2.1.2 The Developer shall pay the Affordable Housing Contribution to the Council before Occupation of more than 75% of the Care Units.
- 2.2 If the parties cannot agree the Affordable Housing Contribution, the matter shall be referred for dispute resolution by any party in accordance with clause 19 (dispute resolution) of this Agreement PROVIDED THAT if such dispute is referred for dispute resolution the Developer shall not be prevented from Occupying more than 75% of the Care Units pursuant to paragraph 2.1.2.

## **3. PROVISION OF THE AFFORDABLE HOUSING UNITS**

- 3.1 Unless otherwise agreed in writing with the Council, the Developer shall not permit Occupation of more than 75% of the Market Care Units until the Affordable Housing Units have been Practically Completed in accordance with the planning permission.
- 3.2 The Developer shall not permit Occupation of the Affordable Housing Units by any persons other than those which are identified within the Council's housing list.
- 3.3 For the avoidance of doubt, the obligations within Schedule 3 to this Agreement apply to the Affordable Housing Units.

## **4. OPERATION OF THE AFFORDABLE HOUSING UNITS**

- 4.1 Subject to the provisions of this paragraph 4, from the date of Practical Completion of the Affordable Housing Units the Affordable Housing Units shall remain as Affordable Housing in perpetuity save that the obligations in this Agreement relating to the provision and/or use of the Affordable Housing Units (including but not limited to the obligations set out in this Schedule 4) shall cease to apply in respect of and not be binding or enforceable against:
- 4.1.1 a Protected Tenant nor any successor in title or any mortgagee or chargee to a Protected Tenant nor any successor in title to any of them; or
- 4.1.2 a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver) of the whole or any part of the Affordable Housing Units or its successors in title or any person deriving title therefrom who has first complied with its duty under paragraph 7.2 below.
- 4.2 Subject to compliance with the Marketing Programme, if after a period of 3 years commencing on the date of Practical Completion of the Affordable Housing Units any Affordable Housing Units have not been sold or occupied (the "**Remaining Units**"), the Developer may elect by giving notice to the Council in writing (an "**Election Notice**") that some or all of the Remaining Units shall revert to being Market Care Units (the "**Elected Units**"), in which case the provisions of this Schedule 4 shall cease to apply to the Elected Units.

4.3 The Election Notice referenced in paragraph 4.2 above must specify the date upon which the Affordable Housing Units shall become Market Care Units, a date being at least one calendar month from the date of service of the Election Notice on the Council.

## **5. MANAGEMENT OF THE AFFORDABLE HOUSING UNITS**

5.1 Subject to paragraph 5.2 below, the Dwellings shall be managed by a Single Residential Management Company in perpetuity.

5.2 The Developer may, at any time, elect to transfer the freehold interest or the leasehold interest, being a lease for a term of not less than 125 years, in some or all of the Affordable Housing Units to a Registered Provider.

5.3 The Developer shall give the Council written notice of its intention to transfer the Affordable Housing Units to a Registered Provider not less than one month prior to the completion of the transfer.

5.4 The Registered Provider must be approved by the Council prior to the completion of the transfer, such approval not to be unreasonably withheld or delayed. Where the parties cannot agree on a Registered Provider the matter may be referred to an Expert by either party in accordance with clause 19 (dispute resolution) of this Agreement.

## **6. MARKETING OF THE AFFORDABLE HOUSING UNITS**

6.1 At least 6 months prior to Practical Completion of the Affordable Housing Units the Developer shall submit the Marketing Programme to the Council for approval.

6.2 The Developer agrees:

6.2.1 not to market or rent the Affordable Housing Units until the Marketing Programme is approved in writing by the Council;

6.2.2 not to market the Affordable Housing Units other than in accordance with the Marketing Programme; and

6.2.3 comply with the provisions of the Marketing Programme.

## **7. MORTGAGEES AND CHARGEES**

7.1 A mortgagee or chargee and its successors in title or any receiver or administrator appointed to realise its security of the whole or part of the Affordable Housing Units or any one of them shall not be bound by the obligations relating to the provision/use of the Affordable Housing Units provided that it complies with the below:

7.1.1 Prior to seeking to dispose of any of the Affordable Housing Units, a mortgagee or chargee must give not less than one month's prior notice to the Council of its intention to dispose.

7.1.2 The notice period shall commence upon the date of receipt by the Council of the mortgagee or chargee's intention to dispose.

7.1.3 If the Council does not respond within the notice period, the mortgagee or chargee is entitled to dispose of its interest free of the affordable housing restrictions.

7.1.4 If the Council responds within the notice period and indicates that the transfer of the Affordable Housing Units can be made while safeguarding the units as affordable

housing, then the mortgagee or chargee must co-operate with these arrangements and use reasonable endeavours to secure such a transfer, provided that:

- (a) the mortgagee or chargee cannot be required to dispose of its interest for a sum less than the total of all accrued principal monies, interest, and costs in relation to the relevant unit.
- (b) if the transfer cannot be completed within two months from the date of the Council's response to the disposal notice, the mortgagee or chargee is entitled to dispose of its interest free of the affordable housing restrictions.

7.2 Nothing in the agreement shall require the mortgagee or chargee to act contrary to its duties under the charge or mortgage in question. The Council must give full consideration to protecting the interest of the mortgagee or chargee.



**SCHEDULE 5**  
**COUNCIL'S AND COUNTY COUNCIL'S COVENANTS**

**1. CONTRIBUTIONS**

The Council and County Council covenant with the Developer:

- 1.1 Where any contribution referred to this Agreement is stated to be payable for a particular purpose it will not be used otherwise than towards that purpose.
- 1.2 Where any contribution paid by any of the parties in accordance with this Agreement has not been used by the Council or the County Council or is not the subject of a binding contract within five years after the date of receipt of the final instalment of the relevant Contribution it will be repaid to the paying party within 30 Working Days of a written demand together with all accrued interest at one per cent above the base rate of the Bank of England prevailing from time to time calculated from the date of receipt of the relevant sum until the date of repayment (and for the purposes of this paragraph the repayment will be to the original paying party and not to that party's successor in title).

**2. ACTING REASONABLY**

- 2.1 The Council and the County Council shall at all times act reasonably and in particular (without prejudice to generality) where any approval or expression of satisfaction is required by this Agreement it will not be unreasonably withheld or delayed.

**EXECUTION PAGE**

**THE COMMON SEAL of the COUNCIL of** )  
**Epsom and Ewell** )  
**was hereunto affixed to this Deed**  
**in the presence of:-**

Mayor ) .....

Authorised signatory ) .....

**EXECUTED AS A DEED by Affixing THE** )  
**COMMON SEAL of SURREY COUNTY** )  
**COUNCIL in the presence of and attested by:-**

Head of Legal/Authorised Signatory ) .....

**EXECUTED as a DEED by SENIOR LIVING**  
**URBAN (EPSOM) LIMITED**

Acting by a director: ) .....

In the presence of:

Signature of witness ) .....

Name (in BLOCK CAPITALS)

Address

**EXECUTED as a DEED by THE ST KILDA**  
**TRUST**

Acting by:

*[To be confirmed by the Trust]* ) .....

**RICHARD STEPHEN POTTON**  
**TRUSTEE**

) .....  
**IAIN HUGH OZANNE MACLEOD**  
**TRUSTEE**

) .....  
**CHRISTOPHER WHITE**  
**TRUSTEE**

**ANNEX 1**  
**LOCATION PLAN**

## **BUS SHELTERS PLAN**

## **CAR FREE ACCESS ROUTE PLAN**