

Wednesday 7th May 2025

CHILTERN NURSERY AND TRAINING COLLEGE LIMITED

and

READING BOROUGH COUNCIL

Agreement

in respect of land at

18 Peppard Road, Caversham, Reading RG4 8JZ

pursuant to Section 106 of the Town and Country Planning Act
1990 (and all other enabling powers)

Planning application reference number 221299

IKEN Reference 027614

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THIS DEED OF AGREEMENT is Dated

7th May

2025

Between:

- (1) **CHILTERN NURSERY AND TRAINING COLLEGE LIMITED** (company registration number 00159730) of 20 Peppard Road, Caversham, Reading, RG4 8JZ (the **Owner**); and
- (2) **Reading Borough Council** whose address is at Civic Offices, Bridge Street, Reading RG1 2LU (the **Council**)

Background

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the Borough of Reading in which the Application Land is situated.
- (B) The Owner is the proprietor of the freehold interest in the Application Land which is registered under HM Land Registry title number BK19437 and has an interest in the Application Land within the meaning of section 106(9)(b) of the 1990 Act.
- (C) The Council has (having regard to the development plan and to all other material considerations) resolved to grant the Planning Permission subject to the Owner entering into planning obligations in the form of this Agreement.
- (D) The Parties have agreed to enter into this Agreement pursuant to the decision referred to at Recital (C) above.
- (E) The Parties are satisfied that the planning obligations contained in this Agreement are:
 - (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.

It is agreed as follows:

1 Definitions

- 1.1 The following expressions shall have the following meanings which for the avoidance of doubt shall apply to all parts of this Agreement:

1990 Act means the Town and Country Planning Act 1990;

Affordable Housing means housing accommodation to be provided with some degree of financial subsidy enabling it to be delivered for sale or rent at a price or on rent terms which are lower than the prevailing open market for similar housing within the Local Area and to be managed and or owned by a Registered Provider or Housing Association for the benefit of Eligible Persons;

Agreement means this deed of agreement;

Application means the application for the Planning Permission and given the reference number 221229;

Application Land means land at 18 Peppard Road, Caversham, Reading RG4 8JZ being land against which this Agreement may be enforced as shown edged in red on drawing number P2114-01C, a copy of which is appended at Schedule 1 to this Agreement;

Approval means the written approval on behalf of the Council from the Assistant Director of Planning, Transport and Public Protection Services (or such other officer of the Council who is from time to time responsible for dealing with and/or approving matters set out in this Agreement) to the Owner and **Approved** and **Approve** shall be construed accordingly;

Assistant Director of Planning, Transport and Public Protection Services means the Council's Assistant Director of Planning, Transport and Public Protection Services for the time being or such other officer as the Council may from time to time designate;

Benchmark Land Value means FIVE HUNDRED AND SIXTY-NINE THOUSAND POUNDS (£569,000.00);

Building means (as the context permits) any building that comprises part of the Development and **Buildings** shall be construed accordingly;

Commencement means the carrying out of a material operation as defined in Section 56(4) of the 1990 Act but (for the purposes of this Agreement only) not including any works of removing any above ground materials (excluding buildings) from the Application Land, temporary landscaping, ground investigation, site survey works, construction of boundary fencing or hauling, decontamination, soil investigation and archaeological testing and **Commence** and **Commenced** shall be construed accordingly;

Commencement Notice means a written notice to be served by the Owner upon the Council stating the proposed date of Commencement;

Contribution means each and every financial contribution (excluding the Council's legal fees and the Monitoring Fee) that is payable by the Owner to the Council in accordance with this Agreement;

Development means the development as set out in Schedule 2 to this Agreement;

Due Date means the date when a Contribution or sum of money (or any part of it) is required to be paid to the Council in accordance with the terms of this Agreement;

Effective Date means the date of this Agreement;

Eligible Person means a person or household in Housing Need and/or unable to afford housing on the open market at prevailing open market values including those on incomes which are insufficient to enable them to afford housing on the open market and who are nominated by the Council from its housing needs register in accordance with the Council's allocation policy;

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 between the parties) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications;

Gross Development Valuations means calculations of the Gross Development Value of the Development, provided by either:

- a) carrying out a Red Book Valuation; or
- b) by submission of a valuation (including supporting evidence and analysis) from no less than three independent estate agents (who are operating within the Local Area) of open market value and subject to the estate agents

explicitly owing a duty of care to the Council PROVIDED ALWAYS that if the result of the three valuations differ the Gross Development Value shall be taken to be the average of the three valuations;

Housing Association means a housing association within the meaning of section 1 of the Housing Associations Act 1985;

Housing Need means, in respect of a person or persons, a housing need because their income is insufficient to enable them to rent or buy housing available in the Local Area on the open market determined with regard to local incomes and local house prices;

Index means the Retail Price Index issued by the Office for National Statistics (including any index that replaces it from time to time);

Index Linked means that the amount of each Contribution payable under this Agreement and any other sum referred to in this Agreement shall be increased by an amount equivalent to the increase in the Index from the Effective Date until the Due Date;

Local Area means the Council's administrative area;

Marketing means advertisement of and promotion of (where the context so admits):

- (a) land comprised in the Application Land; and/or
- (b) Buildings or parts of Buildings comprised in the Development in such locations and at such a price as would be appropriate and consistent with open market value and otherwise suitably exposed to the market to ensure that the potential occupiers/purchasers could be reasonably expected to be aware of the opportunity

and **Market** shall be construed accordingly;

Monitoring Fee means the sum of Four Hundred Pounds (£400.00) as a contribution towards the Monitoring Officer's costs of monitoring the provisions of this Agreement;

Monitoring Officer means the Council's monitoring officer (within the Council's Directorate of Economic Growth and Neighbourhood Services) (or any Directorate replacing it) as designated by the Council to monitor the obligations set out in this Agreement;

New Dwelling means the new dwelling or use formed in the carrying out of the Development pursuant to the Planning Permission

Notified Date of Occupation means the date on which the Owner intends to cause or permit the first Occupation of the New Dwelling as confirmed to the Council by the Owner;

Occupation means (as the context permits) beneficial occupation for the purposes permitted by the Planning Permission of any Building (or part of a Building) constructed on the Application Land within the Development PROVIDED THAT, for the avoidance of any doubt, occupation for the purposes of construction, fitting out and marketing shall not constitute Occupation (and **Occupy**, **Occupied** and **Occupier** shall be construed accordingly);

Occupation Notice means a written notice to be served by the Owner upon the Council stating the proposed date of Occupation;

Party means each party to this Agreement and its respective successors and those deriving title under it (and **Parties** shall be construed accordingly);

Planning Permission means the planning permission to be granted pursuant to the Application;

Red Book Valuation means a valuation carried out by a RICS registered surveyor following mandatory practice for RICS members undertaking valuation services contained in the up to date and most current edition of the Red Book and subject to the surveyor explicitly owing a duty of care to the Council;

Reasonable Endeavours means that (subject to the other terms of this Agreement) the Party under such an obligation will be bound to attempt to fulfil the relevant obligation by the expenditure of such reasonable and proportionate effort and/or sums of money and the engagement of such professional or other advisors as in all the circumstances may be reasonable to expect PROVIDED THAT the Party will not be required to issue proceedings (including any appeal) in any court, public inquiry or other hearing;

Registered Provider means an affordable housing provider as provided for in the Housing and Regeneration Act 2008;

Residential Unit means any residential dwelling in the Development (and **Residential Units** shall be construed accordingly);

Subsequent Planning Permission means a planning permission that is granted in the event of any subsequent application for planning permission for the further development of the Application Land which authorises the creation of Additional Residential Floorspace to be used for C3 residential purposes;

“Trigger Date” means the date of Practical Completion of the New Dwelling, or, four weeks prior to the Notified Date of Occupation, whichever is the earlier;

Trigger Date Notice means a written notice to be served by the Owner upon the Council stating the Trigger Date;

Working Days means any day (other than Saturdays Sundays or public holidays in England) when banks in London are open for business; and

2 Interpretation

- 2.1 Clause headings shall not affect the interpretation of this Agreement.
- 2.2 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.
- 2.4 Unless the context otherwise requires words in the singular shall include the plural and, in the plural, shall include the singular.
- 2.5 Unless the context otherwise requires a reference to one gender shall include a reference to the other genders.
- 2.6 A reference to any Party shall include that Party's successors in title and assigns and personal representatives.

- 2.7 References in this Agreement to the Council shall include any successor to its functions as the local planning authority in relation to the Application Land and any body to which all or part of its functions may lawfully have been transferred.
- 2.8 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and an obligation on a person to do something includes an obligation to procure that thing to be done.
- 2.9 Where an obligation falls to be performed by more than one person the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2.10 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.11 Save as specified to the contrary any reference to Act of Parliament whether general or specific shall include any modification or re-enactment thereof for the time being in force and shall also include all instruments, orders, plans, regulations, by-laws and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 2.12 A reference to writing or written does not include faxes or e-mail.
- 2.13 References to Clauses, Plans, Schedules, Paragraphs and Appendices are to the Clauses, Plans, Schedules, Paragraphs and Appendices of this Agreement.

3 Legal Effect

- 3.1 This Agreement is made pursuant to:

- (a) section 106 of the 1990 Act;
- (b) section 1 of the Localism Act 2011;
- (c) section 111 of the Local Government Act 1972; and
- (d) all other enabling powers,

with an intent to bind the Owner's interest in the Application Land (and each and every part of it) subject to the provisions of Clauses 4 (conditionality), 5 (the Owner's obligations), 7.2 (lapse) and 7.5 (release).

- 3.2 This Agreement is a planning obligation within the meaning of section 106 of the 1990 Act and the obligations contained within it shall, subject to the provisions of the Agreement, be enforceable by the Council against the Owner (including its successors in title and those deriving title from the Owner).
- 3.3 This Agreement is without prejudice to and shall not be construed as derogating from any of the rights, powers and duties of the Council pursuant to any of its statutory functions nor in any other capacity.

4 Conditionality

- 4.1 Unless otherwise required in order to give legal effect to any provision in this Agreement, this Agreement is conditional upon:
- (a) the grant of the Planning Permission; and
 - (b) the Commencement of the Development,

save for Clause 7 which shall come into effect upon the Effective Date.

5 Owner's Obligations

5.1 The Owner covenants with the Council, so as to bind the entirety of its interest in the Application Land, to comply with the restrictions, covenants and requirements set out in in this Agreement.

5.2 The Owner covenants with the Council:

- (a) not to Commence unless and until it has served a Commencement Notice and
- (b) not to encumber nor deal with the Application Land (or any part of it) in any manner pursuant to which the Owner may be prevented from carrying out its covenants and obligations contained in this Agreement.

6 Council's Obligations

6.1 The Council covenants with the Owner to observe and perform the requirements on its part contained in this Agreement.

7 Agreements and Declarations

7.1 Fees

7.1.1 The Owner covenants with the Council to pay on or before the Effective Date:

- (a) the Council's reasonable legal costs and expenses incurred in the preparation, negotiation, and completion of this Agreement; and
- (b) the Monitoring Fee.

7.2 Lapse

7.2.1 The obligations in this Agreement shall cease to have effect (insofar only as they have not already been complied with) if the Planning Permission is quashed, revoked or modified (without the consent of the Owner) or is withdrawn or expires prior to Commencement of the Development.

7.3 Future Development

7.3.1 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission) that is granted (whether or not on appeal) after the date of this Agreement.

7.4 Statutory Undertakers

7.4.1 This Agreement shall not be enforceable against any statutory undertakers (including their successors in title) that shall acquire an interest in the Application Land for the purpose of providing services to or for the Development or neighbouring developments.

7.5 Release

7.5.1 The Owner shall upon parting:

- (a) with its interest in any part of the Application Land be released from all obligations and duties under the terms of this Agreement insofar as they relate to, or are binding on, that part of the Application Land; and

- (b) with the entirety of its interest in the Application Land be released from all liabilities whatsoever under the terms of this Agreement.
- 7.5.2 The releases provided for in Clause 7.5.1 shall not apply to any prior or existing breach of this Agreement as at the date of disposal.
- 7.6 **Right of access**
- 7.6.1 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Application Land at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.
- 7.7 **No waiver**
- 7.7.1 No waiver (whether express or implied) by the Council of any breach of or default by the Owner in performing or observing any of the terms of or covenants, obligations or restrictions in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms, covenants, obligations, or restrictions or from acting upon any subsequent breach or default in respect of any of them by the Owner.
- 7.8 **No Fetter on Discretion**
- 7.8.1 Nothing in this Agreement shall fetter or prejudice the Council's statutory rights, powers, discretions and responsibilities under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.9 **Severance**
- 7.9.1 Each clause, sub-clause, schedule or paragraph shall be separate, distinct and several from each other to the extent only that if any clause, sub-clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause, schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, sub-clause, schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause, schedule or paragraph contained in this Deed.
- 7.10 **Indexation**
- 7.10.1 The amount of each Contribution and any other sum payable under this Agreement shall be Index Linked.
- 7.11 **Interest on unpaid monies**
- 7.11.1 If any Contribution and/or other sum due under this Agreement is paid late the Owner shall pay to the Council interest at the rate of four percent (4%) per annum above the base rate of the Bank of England for the time being in force on the sum of the Contribution due or (as the case may be) on any amount of that Contribution which may be outstanding from the date on which the Contribution (or the relevant part of it, as the case may be) is due to be paid in accordance with the terms of this Agreement up to the date of actual payment of the Contribution (or the relevant part of it, as the case may be).

- 7.11.2 Any interest paid or payable pursuant to Clause 7.11.1 above shall be deemed to be part of the Contribution or sum due to which such interest relates.

7.12 Payments to the Council

- 7.12.1 All Contributions and other sums due to the Council under the terms of this Agreement shall (unless otherwise notified in writing by the Council to the Owner) be paid to the Council by means of telegraphic transfer to the Council as follows:

Reading Borough Council

Sort Code: 30-91-31

Account Number: 00271502

Lloyds Bank plc 24 Broad Street Reading RG1 2BT

Account: Reading Borough Council quoting reference: s106/221299/027614 or other reference quoted by the Council in the relevant S106 Demand Notice issued in respect of the obligation,

and the Council will not alter the account details without giving formal notice to such effect in accordance with Clause 7.13.

- 7.12.2 No Contribution or other sum required under this Agreement (or part of it) shall be paid to the Council earlier than eight (8) weeks before the Due Date.

7.13 Notice

- 7.13.1 Any notice or other written communication to be served by one Party upon another pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered or recorded delivery post to the Party to be served at its address specified in Clause 7.13.2 or such other address as may from time to time be notified for the purpose by notice in writing by any Party to the other Party and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by a duly authorised signatory.

- 7.13.2 The address for any notice or other written communication is as follows:

(a) in respect of the Council

Civic Offices, Bridge Street, Reading RG1 2LU

(b) in respect of the Owner

Chiltern Nursery and Training College, 20 Peppard Road, Caversham, Reading, RG4 8JZ

or such other address as has been notified to the other Party as set out in this Clause 7.13.

7.14 Consents and Approvals

- 7.14.1 In this Agreement where the agreement, Approval, consent or any other expression of satisfaction is required from the Council that agreement, Approval, consent or any other expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

7.15 Dispute Resolution

- 7.15.1 In the event of any dispute arising between the Parties (which cannot be resolved by the Parties) in respect of this Agreement either Party may at any time require by notice in writing to the other Party an independent expert (the **Expert**) to resolve the dispute in accordance with the provisions of this Clause 7.15 and as follows:
- (a) in the case of a dispute regarding the interpretation or meaning of any provision in this Agreement to planning counsel to be agreed between the Parties, or failing agreement, to be appointed by the President for the time being of the Law Society; or
 - (b) in the case of any other dispute regarding this Agreement to a member of the Royal Institution of Chartered Surveyors to be agreed between the Parties, or failing agreement, to be appointed by the President for the time being of such Institution.
- 7.15.2 The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to this Clause.
- 7.15.3 The Expert shall be appointed within one (1) month of an application being made by one of the Parties pursuant to Clause 7.15.1.
- 7.15.4 The Expert shall be entitled to invite written representations from each of the Parties.
- 7.15.5 The Expert shall act as an expert and not as an arbitrator.
- 7.15.6 The costs of the dispute shall be payable by the Parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the Parties.
- 7.15.7 The decision of the Expert shall be final and binding on the Parties save in the case of manifest and material error.
- 7.15.8 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practical timescales allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.
- 7.15.9 Nothing in Clauses 7.15.1 – 7.15.8 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Agreement.

7.16 Future Section 73 Permission(s)

- 7.16.1 In the event that any new planning permission(s) in respect of the Development is or are granted by the Council pursuant to section 73 of the 1990 Act (**Future S73 Permissions**) and unless otherwise agreed between the parties with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:
- (a) the obligations in this Agreement shall (in addition to continuing to bind the Application Land in respect of the Planning Permission) relate to and bind the Application Land in respect of development pursuant to that Future S73 Permission; and
 - (b) the definitions of Application, Development and Planning Permission shall be construed to include reference to any application for that Future S73 Permission(s), the Future S73 Permission(s) granted pursuant to that

application and the development permitted by that Future S73 Permission(s); and

- (c) this Agreement shall be endorsed with the following words in respect of that Future S73 Permission(s) (with the blank spaces completed with the reference number and date of issue of the relevant Future S73 Permission(s)):

'The obligations in this Agreement relate to and bind the Application Land in respect of development pursuant to a new planning permission reference [] granted on [] 20[] pursuant to section 73 of the Town and Country Planning Act 1990 (as amended).'

PROVIDED THAT nothing in this Clause shall fetter the general discretion of the Council in determining any application(s) under section 73 of the 1990 Act including a requirement for a new deed or a supplemental deed to be entered into pursuant to section 106 and/or section 106A of the 1990 Act before that application is determined by the Council.

7.17 Third Party Rights

- 7.17.1 Unless the right of enforcement is expressly granted and except in relation to:

- (a) any successor bodies of the Council; and
- (b) any successors in title of and those deriving title under the Owner,

it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 7.17.2 This Agreement may be rescinded or varied without the consent of a third party to whom an express right to enforce any of its terms has been provided.

7.18 Local Land Charge

- 7.18.1 This Agreement is and shall be registered as a local land charge by the Council.

7.19 Change of Ownership

- 7.20 Save for any disposal to a statutory undertaker/utility company the Owner shall provide the Council with written notice of any change in ownership of its interest in the Application Land before all the obligations under this Agreement have been discharged within ten (10) Working Days of any such change occurring PROVIDED THAT such written notice shall include details of the name and address of the current and new owner of such interest(s) together with details of that part of the Application Land to which each of their interests apply.

7.21 Jurisdiction

- 7.22 This Agreement is governed by and interpreted in accordance with the law of England.

In witness whereof the Parties have executed this Agreement as a deed the day and year first above written.

Schedule 1 – Plans and Drawings

Drawing number P2114-01C Proposed Site Plan (Application Land)

Schedule 2 – the Development

Change of use of the existing building to 1 x residential dwelling, creation of new access to Peppard Road with new railings and gates

Schedule 3 - Triggers

1 Triggers

- 1.1 Subject to Paragraph 1.2 below, to provide the Council with no less than ten (10) Working Days prior written notice of the following events:
 - (a) Commencement of the Development;
 - (b) First Occupation;
 - (c) Trigger Date.
- 1.2 If any of the events listed in Paragraph 1.1 above are to occur within ten (10) Working Days of the Effective Date, to provide the Council with prior written notice of that event as soon as possible but it is agreed that such notice does not need to be given ten (10) Working Days in advance.
- 1.3 Pursuant to Paragraph 1.1 (a) the Owner shall serve the Council with a Commencement Notice.
- 1.4 Pursuant to Paragraph 1.1 (b) the Owner shall serve the Council with an Occupation Notice.
- 1.5 Pursuant to Paragraph 1.1 (c) the Owner shall serve the Council with a Trigger Date Notice.

Schedule 4 – The Deferred Affordable Housing Contribution

Additional Definitions in relation to Schedules 3 and 4 and 5 and 6

The following additional expressions shall have the under mentioned meanings in relation to Schedules 4 and 5 and 6

“Acquisition Cost”

means the total consideration given for the acquisition of the Application Land

“Deferred Affordable Housing Contribution”

means a sum calculated in accordance with Schedules 4 and 5 and 6.

“Deficit”

means a sum equal to the Owner's Actual Profit less the Owner's Target Profit (as detailed in the Viability Appraisal) which sum can only be a negative figure which is zero pounds (£0) or less

“Development Costs”

shall mean the aggregate costs expenses liabilities and other sums reasonably and properly incurred (or anticipated to be incurred) by or on behalf of the Owner in connection with the acquisition disposal construction marketing and management of the Development including (without limitation to the foregoing):-

- (a) all construction costs (to include any site remediation demolition stripping out site clearance works along with works of construction refurbishment or improvement);
- (b) Stamp Duty Land Tax and Land Registry Fees;
- (c) the cost of extinguishment modification or variation of any interests or rights in over or against the Application Land;
- (d) the cost of Statutory Consents;
- (e) the Planning Costs and/or any sums paid or payable under agreements entered into by the Owner under (i) Sections 38 and/or 278 of the Highways Act 1980 (ii) Section 104 of the Water Industry Act 1991 for the provision of drainage works as part of the Development (iii) and any other agreement or licence with any competent authority or body relating to other services or works which may be required in order to facilitate

the Development and FOR THE Avoidance of doubt does not include CIL
Surcharges and Late payment interest

- (f) any Finance Costs
- (g) any costs relating to the sale lease or other disposal of the Development (including structural warranties) and all legal surveyors solicitors estate agents and other professional fees agency commission advertising marketing promotional expenses and other costs in connection with any of these matters referred to in this definition
- (h) fees of all professional consultants appointed in relation to the Development
- (i) fees paid to a project manager and persons providing management services and the cost of staff employed by the Owner exclusively for the performance of duties in relation to the Application Land
- (j) provided that the Development proceeds without unreasonable delay the costs incurred in insuring the Application Land and the Development
- (k) rates including sums payable pursuant to any statute or byelaw rents and value added tax where the same is not recoverable or not zero rated;
- (l) and any other costs expenses or charges reasonably and properly incurred in the carrying out of the Development and in the sale lease or other disposal of the New Dwellings

PROVIDED ALWAYS that all such costs expenses liabilities and other sums shall only be taken into account once when calculating the Development Costs

“Deemed Disposal”

means a deemed transfer of the freehold interest or grant of a long leasehold estate or interest in a New Dwelling at Open Market Value where the Owner does not dispose of the New Dwelling but lets it out or otherwise permits Occupation of the said New Dwelling

“Disposal”

means the transfer of the freehold interest or the grant of a long leasehold estate or interest (not less than a 99 year term) in a New Dwelling at Open Market Value and for the avoidance of doubt Disposal shall not mean the exchange of contracts and “dispose” and “disposed of” shall be construed accordingly

“Finance Costs”

means finance costs and interest paid or payable on loans or other monies to finance or fund the Development and any arrangement fees and other costs of any lender payable by the Owner including interest on internal equity funding and where any funding is provided by the Owner from their own resources notional interest at the interest rate at which the Owner is able to secure loan finance provided that the return on such internal equity funding shall not exceed five per centum (5%) per annum

“Gross Development Value”

means the actual long leasehold or freehold capital receipt of Disposal of the New Dwelling together with all other actual sale proceeds capital payments and receipts paid to or received by the Owner or by others on their behalf after the date of this Agreement (and in the case of a Deemed Disposal of the New Dwelling the Open Market Value) including in each case (but not limiting the generality of the foregoing) any income or receipt generated by the Owner from:-

- (1) in respect of the Disposal of a New Dwelling by way of a part exchange or by way of a swap the full value of the dwelling acquired without deduction for the property taken in part exchange
- (2) in respect of the Disposal of a New Dwelling by way of a shared equity scheme the full amount of the premium payable under the lease together with the up to date market value of any residual interest of the Owner in such New Dwelling as at the date of the Viability Appraisal
- (3) in respect a New Dwelling subject to a short residential lease all rents received up to the Disposal of that New Dwelling
- (4) all rents licence fees and other sums received by the Owner (after payment of costs and commissions) from any licensee or occupier or any proposed licensee or occupier; and
- (5) any non-repayable sums secured from or through third parties in relation to the Development including government relief grants incentives or tax opportunities; and
- (6) the value of any overage or other performance related payment attributable to any Disposal; and
- (7) any compensation damages interest or other payment or sum of whatever nature not otherwise provided for in this definition received by or on behalf or as agent

of the Owner or a third party on their behalf for whatsoever purpose in respect of the Development; and

- (8) the actual or independently estimated capitalised rental value of any ground rents on long leasehold disposals

PROVIDED ALWAYS that all such sale proceeds capital payments receipts and other income shall only be taken into account once when calculating the Gross Development Value

“Maximum Sum”

means the sum of sixty-seven thousand and five hundred pounds (£67,500) as increased by Indexation which reflects the policy compliant quantum of Affordable Housing within the Development that may have otherwise been provided

“Open Book Basis”

means all sales lettings income and receipts together with architect certificates and independently verified cost schedules associated with the Development Costs Finance Costs Planning Costs and any other costs and expenses reasonably and properly incurred in the carrying out of the Development which includes together with if necessary books of account vouchers receipts invoices orders contractual documentation and other documentation relating to the carrying out of the Development which shall be open to inspection by the Council

“Open Market Value”

means the price at which the sale of the relevant freehold or long leasehold interest with vacant possession completed unconditionally for cash consideration or the calculation of Deemed Disposal whichever occurs on the date of valuation assuming:

- a willing seller and a willing buyer;
- that the sale is an arm's-length transaction;
- that prior to the date of valuation there had been a reasonable period (having regard to the nature of the New Dwelling and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale;
- that the state of the market level of values and other circumstances were on an earlier assumed date of exchange of contracts the same as on the date of valuation;

- that no account is taken of any additional bid by a prospective purchaser with a special interest;
- that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
- that this Agreement did not bind the interest concerned

“Owner’s Actual Profit”

means the Gross Development Value less all Development Costs as detailed in the Viability Appraisal

“Owner’s Target Profit”

means a sum of money equal to fifteen per centum (15%) of the Gross Development Value as detailed in the Viability Appraisal

“Planning Costs”

means Community Infrastructure Levy under the Community Infrastructure Levy Regulations 2010 (as amended) and FOR THE Avoidance of doubt does not include CIL Surcharges and Late payment interest and sums to be paid to the Council pursuant to this Agreement (including legal fees incurred in connection with this Agreement) other than the Deferred Affordable Housing Contribution and all professional and associated costs (including planning application fees) incurred by the Owner in the obtaining of planning permission for the Development

“Practical Completion”

means complete in all material respects such that it is fit for its intended purpose and available for use and Practically Completed shall be construed accordingly;

“Sales Schedule”

means a schedule setting out the Gross Development Valuation;

“Statutory Consents”

means any statutory approvals consents or licences or permissions required from any local or competent authority to enable the Owner to carry out and complete the Development

“Supporting Evidence”

means the following:-

- (a) for any costs actually incurred at the Trigger Date receipted invoices or other evidence of payment certified by the Owner's quantity surveyor (RICS or CIOB member) or costs consultant or other professional (subject to such person expressly owing a duty of care to the Council);
- (b) for any costs yet to be incurred at the Trigger Date the up to date best estimate of such costs by the Owner or where available by the Owner's quantity surveyor (RICS or CIOB member) or costs consultant or other professional (subject to such person expressly owing a duty of care to the Council);
- (c) for sale proceeds and other monies received at the Trigger Date copies of sale contracts or completion statements certified by the Owner's solicitor;
- (d) in relation to any New Dwelling which is unsold at the Trigger Date the evidence used to inform the Gross Development Valuation

“Surplus”

means a sum equal to the Owner's Actual Profit less the Owner's Target Profit (as detailed in the Viability Appraisal) which sum can only be a positive figure which is more than zero pounds (£0);

“Viability Appraisal”

means the appraisal of the viability of the Development as a whole submitted to the Council within 10 working days of the Trigger Date so that the Deferred Affordable Housing Contribution may be paid if a Surplus is calculated in accordance with Schedules 4 and 5 and 6.

The Owner covenants with the Council in relation to the Viability Appraisal as follows:

1. That the Viability Appraisal will be produced on an Open Book Basis under which there shall be full and frank disclosure of all relevant information and that all costs included in the Viability Appraisal shall be reasonably and properly attributable to the Development and be reasonably and properly incurred in each case

2. That the Viability Appraisal shall be produced in the following form and using the figures as agreed in the Viability Appraisal submitted with the Application at Appendix 1 (HCA Development Appraisal Tool – Summary Output) for comparison and calculation of any Surplus

<u>Actual & Forecast Totals</u>	Actual at Trigger Date £	Forecast agreed in HCA Development Appraisal Tool £
<u>REVENUE</u>		
Gross Development Value (including any other capital receipts & income)		£1,350,000
<u>Less COSTS</u>		
Acquisition Cost		£569,000
Development Costs		£974,965
Planning Costs		£99,000
Finance Costs		6.5%
Any other reasonable actual and/or estimated costs incurred as at the date of the Viability Appraisal		Stamp Duty Estate Agents Fees Legal Fees
<u>TOTAL</u>		
Owner's Actual Profit		
Owner's Target Profit		15%
Surplus or Deficit		-690,151
Deferred Affordable Housing Contribution		67,500

For the avoidance of doubt there will be no double counting of items included in the Viability Appraisal under the headings of "Revenue" and "Costs".

3. The Deferred Affordable Housing Contribution means the sum calculated in accordance with the following formula:-

$$S \times 50\% = \text{Deferred Affordable Housing Contribution (if any)}$$

Where:-

S = Surplus

Provided That:

- (a) where the above calculation results in a sum higher than the Maximum Sum, the Deferred Affordable Housing Contribution shall be equal to the Maximum Sum as increased by Indexation; and
 - (b) where a Deficit applies the Deferred Affordable Housing Contribution shall be zero (£0).
- 4. The Owner agrees that in making a Disposal the Owner is under a duty to use all commercial and reasonable endeavours (a) to maximise the Gross Development Value from a Disposal and (b) where there is a Deemed Disposal the Deferred Affordable Housing Contribution shall be calculated by substituting Open Market Value of the New Dwelling for the Gross Development Value

SCHEDULE 5 – Viability Review and Payment

The Owner covenants with the Council in relation to the Viability Review and Payment as follows:

1 Viability Review

- 1.1 No later than 10 working days after the Trigger Date and no earlier than four (4) weeks before the Trigger Date, to submit a Viability Appraisal and Supporting Evidence to the Council for Approval.
- 1.2 No later than twenty (20) Working Days after receipt of the Viability Appraisal and Supporting Evidence pursuant to Paragraph 2.1 above, the Council shall notify the Owner of any further information it reasonably requires in order to determine whether the Viability Appraisal can be Approved.
- 1.3 To provide any further information that is reasonably required by the Council pursuant to Paragraph 1.2 above no later than ten (10) Working Days following notification from the Council under Paragraph 1.2 above PROVIDED THAT this process shall continue until the Council is satisfied that it has sufficient information properly to determine the Viability Appraisal
- 1.4 If the Council has not Approved the Viability Appraisal within ten (10) Working Days of the end of the periods referred to in 1.3 above the Viability Appraisal shall be deemed to be approved and any payment due shall be paid to the Council within 5 days of the date of deemed approval, PROVIDED THAT the Owner shall not be obliged to pay more than the Maximum Sum (Index Linked).
- 1.5 The Owner shall pay the Council's reasonable costs in the Approval of the Viability Appraisal within 10 Working Days of the Council's written notice of those costs.
- 1.6 For the avoidance of doubt, the Owner shall pay the costs of any property valuation obtained pursuant to this Agreement.

2 Payment of the Deferred Affordable Housing Contribution

- 2.1 Once the Viability Appraisal is approved in writing by the Council pursuant to Paragraph 1 above, the Owner shall pay the Deferred Affordable Housing Contribution in accordance with this Paragraph 2.
- 2.2 The Deferred Affordable Housing Contribution shall be paid to the Council by the Owner within 5 days of any Approval or Deemed Approval under paragraph 1 above or Prior to first Occupation whichever is the earlier, PROVIDED THAT the Owner shall not be obliged to pay more than the Maximum Sum (Index Linked). In the event of late payment the Owner shall also be required to pay to the Council Interest in accordance with Clause 7.11 on the Deferred Affordable Housing Contribution from the date on which the Deferred Affordable Housing Contribution falls due to the date on which it is paid.
- 2.3 The Owner may at any time pay to the Council the Maximum Sum (Index Linked) together with notice to the Council to that effect and thereupon the obligations under this Schedule 5 shall cease to apply.

Execution Page

EXECUTED (BUT NOT DELIVERED UNTIL THE DATE HEREOF) by the affixing of THE COMMON SEAL of <u>READING BOROUGH COUNCIL</u> in the presence of:-	))))))  ARSILAN BILAL Authorised Signatory
---	--

Minute	See ODN
Originator	DA
Seal No.	180/25
Checked	AB

**Executed as a Deed by CHILTERN
NURSERY AND TRAINING
COLLEGE LTD acting by a director:**

sign here:

Director

print name:

JONATHAN BRIAN GATER

In the presence of:

Witness signature:

Witness sign here:

Witness name:

print name: OLIVIA DEE BUTHER

Witness address:

1 FRIAR STREET

READING

RG1 1DA

Witness occupation:

TRAINEE SOLICITOR

NOTES

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Client:

CHILTERN NURSERY & TRAINING COLLEGE

Project:

CHANGE OF USE TO RESIDENTIAL, NEW VEHICLE ACCESS, NEW GATES AND RAILINGS

Location:

18-20 PEPPARD ROAD, CAVERSHAM RG4 8JZ

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LOCATION PLAN AND BLOCK PLAN

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P2114-01

Revision:

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