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**AN AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ two thousand and \_\_\_\_\_ between **UTTLESFORD DISTRICT COUNCIL** of Council Offices London Road Saffron Walden Essex CB11 4ER (hereinafter referred to as UDC) of the first part *[Name, company registration number and registered office address]* (hereinafter called the “Developer”) of the second part *[Name, company registration number and registered office address]* (hereinafter called “the Owner”) of the third part and *[Name, company registration number and registered office address]* (hereinafter called “ the Mortgagee”) of the fourth part

## 1. Definitions

- 1.1. “the 1972 Act” shall mean the Local Government Act 1972
- 1.2. “the 1990 Act” shall mean the Town & Country Planning Act 1990
- 1.3. “the 1999 Act” shall mean the Contracts (Rights of Third Parties) Act 1999
- 1.4. “the 2000 Act” shall mean the Local Government Act 2000
- 1.5. “the Land” shall mean the land shown on the Plan edged in red
- 1.6. “Date of Grant” shall mean the date the Permission is issued by UDC
- 1.7. “the Development” shall mean the development authorised by the Permission
- 1.8. “Implementation” shall mean the implementation of the Permission by the carrying out of any material operation (as defined by s. 56 of the 1990 Act) pursuant to the permission PROVIDED ALWAYS for the purposes of this Agreement Implementation shall exclude:
  - a. demolition
  - b. site survey
  - c. ecological survey
  - d. archaeological survey
  - e. remediation
  - f. erection of fences or hoardingsand Implement and Implemented shall mutatis mutandis be construed accordingly

1.9. "Implementation Date" shall mean the date specified by the Developer to the Authorities in a written notice served upon the Authorities as the date upon which the development authorised by the Permission is to be commenced or if no such notice is served the date of Implementation

1.10. "Legal Charge(s)" shall mean (a) legal charged dated and made between the Owner of the one part and the Mortgagee of the other part referred to in the Charges Register of Title of the Land

1.11. "the Permission" shall mean the planning permission (a draft of which is annexed at Schedule 1) granted by UDC in respect of the Planning Application

1.12. "the Plan" shall mean the plan at Schedule 2

1.13. "the Planning Application" shall mean the application made by the Developer under reference number UTT/ for

## 2. Recitals

2.1. UDC is the District Planning Authority within the meaning of the 1990 Act for the District in which the Land is situated

2.2. The Owner is registered at HM Land Registry as proprietor of the Land with freehold title under the Title Numbers set out in Schedule 3 subject to the Legal Charge(s)

2.3. The Developer has made the Planning Application to UDC

2.4. UDC the Owner and the Developer have agreed to enter into this agreement pursuant to the operative powers described in clause 3 for the purpose of regulating the Development and use of the Land

2.5. It is the intention of the parties that this agreement shall remain in full force and effect until such time as it is replaced by a further agreement pursuant to s.106 and s.106A of the 1990 Act

## 3. Enabling Powers and Obligations

3.1. This agreement is entered into pursuant to section 106 of the 1990 Act section 111 of the 1972 Act and section 2 of the 2000 Act.

3.2. Such of the covenants contained herein as are capable of being planning obligations within the meaning of section 106 of the 1990 Act

are declared to be planning obligations and as such are enforceable by UDC

4. Obligations undertaken by the Owner the Developer and the Mortgagee

4.1. With the intent that the Land shall be subject to the obligations and restrictions contained in this agreement for the purpose of restricting or regulating the Development and use of the Land so that the provisions of this agreement shall be enforceable against the Owner the Developer and (but only for so long as the Mortgagee is in possession of the Land) the Mortgagee and their successors in title the Owner the Developer and the Mortgagee hereby jointly and severally covenant with UDC to observe and comply with the obligations contained in Schedule 3

4.2. The liability of the Owner and the Developer under this agreement shall cease once they have parted with their interest in the Land or any relevant part thereof (in which event the obligations of the Owner or the Developer under this agreement shall cease only in relation to that part or those parts of the Land which is or are transferred by them) but not so as to release either party from liability for any breaches hereof arising prior to the transfer

5. Notice of Implementation

5.1. The Developer will give UDC not less than 28 days notice of its intention to implement the permission specifying the intended Implementation Date

5.2. Forthwith upon Implementation the Developer will give UDC notice of Implementation

6. Provisos and Interpretation

6.1. No provision of this agreement shall be interpreted so as to affect contrary to law the rights powers duties and obligations of UDC in the exercise of any of its statutory functions or otherwise

- 6.2. If any provision of this agreement shall be held to be unlawful or unenforceable in whole or in part under any enactment or rule of law such provision shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected
- 6.3. No waiver (whether express or implied) by UDC of any breach or default in performing or observing any of the obligations covenants or terms and conditions of this agreement shall constitute a continuing waiver and no such waiver shall prevent UDC from enforcing any of the said obligations covenants or terms and conditions or from acting upon any subsequent breach or default
- 6.4. Insofar as any parts of this agreement may be subject to the rule against perpetuity those parts shall remain in force for as long as any of the provisions hereof remain to be performed or observed or 125 years whichever shall be the shorter
- 6.5. [References in this agreement to sums of money shall be deemed to mean that sum plus a percentage thereof calculated on 1<sup>st</sup> March in each year (hereinafter called the "Review Date") equivalent to the percentage increase in the Retail Price Index from the date hereof to each Review Date until the Developer shall have paid the full and final amount of such sums to the organisation entitled to receive the same under the terms of this agreement to be calculated pro rata in the case of any balance of such sums remaining unpaid at each Review Date]
- 6.6. Any provision contained in this agreement requiring the consent or approval of any party hereto shall be deemed to incorporate a proviso that such consent or approval shall not be unreasonably withheld or delayed
- 6.7. The headings in this agreement do not affect its interpretation
- 6.8. Unless the context otherwise requires references to sub-clauses clauses and schedules are to sub-clause clauses and schedules of this agreement
- 6.9. Unless the context otherwise so requires:

- 6.9.1. references to UDC the Owner and the Developer include their permitted successors and assigns
- 6.9.2. references to statutory provisions include those statutory provisions as amended or re-enacted; and
- 6.9.3. references to any gender include both genders

## 7. Agreements and Declarations

- 7.1. The obligations contained in Schedule 4 shall take effect only upon the Implementation Date (save where expressly stated to the contrary in Schedule 3) and in the event that the Planning Application is refused or the Permission not implemented and expires the obligations contained in Schedule 3 shall absolutely cease and determine without further obligation upon the Owner or the Developer or their successors in title
- 7.2. The obligations contained in Schedules 3 shall absolutely cease and determine without further obligation upon the Owner or the Developer or its successors in title if the Permission is revoked is modified without the consent of the Owner and the Developer expires or if a separate planning permission is subsequently granted and implemented which is incompatible with the Permission
- 7.3. Save as specifically provided in Schedule 3 nothing in this agreement shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than one relating to the Development)
- 7.4. This agreement constitutes a Local Land Charge and shall be registered as such provided that the Authorities will upon the happening of any of the eventualities referred to in paragraphs 7.1. and 7.2. of this Part or upon the determination of this agreement howsoever determined procure the removal of any entry made on the Local Land Charges Register in respect of or related to this agreement

## 8. Exclusion of the 1999 Act

For the purposes of the 1999 Act it is agreed that nothing in this agreement shall confer on any third party any right to enforce or any benefit of any term of this agreement

9. Notices

9.1. Any notices required to be served on or any document to be supplied or submitted to any of the parties hereto shall be sent or delivered to the address stated in this agreement as the address for the receiving party or such other address as shall from time to time be notified by a party to this agreement as an address at which service of notices shall be accepted or (in the case of a limited company) at its registered office

9.2. Any notices to be served or documents to be supplied or submitted or applications for approval under the terms of this agreement to be made which are addressed to UDC shall be addressed to the Head of Planning Services of that Council

10. Entire Agreement

This agreement the schedules and the documents annexed hereto or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements arrangements and understandings between the parties relating to that subject matter

11. Costs

Upon the execution of this agreement the Developer will pay the reasonable costs of UDC in connection with the negotiation and preparation thereof

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as a deed the day and year before written

**SCHEDULE 1**  
**(The Permission)**

**SCHEDULE 2**  
**(The Plan)**

**SCHEDULE 3**  
**(Obligations entered into with UDC)**