

5106/446

J.Lester

From: R.Illsley  
Sent: 07 May 2014 12:52  
To: J.Lester  
Subject: John Davis Workshop Huthwaite  
Attachments: Sipc\_austr14050712400.pdf

Hi Jane,

I attach a copy of the completed deed for your attention.

Kind regards

Rob

-----Original Message-----  
From: [ithelpdesk@ashfield-dc.gov.uk](mailto:ithelpdesk@ashfield-dc.gov.uk) [mailto:[ithelpdesk@ashfield-dc.gov.uk](mailto:ithelpdesk@ashfield-dc.gov.uk)]  
Sent: 07 May 2014 12:41  
To: R.Illsley  
Subject: Message from Ipc\_austria

J. Lester

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From:

Sent:

08 May 2014 10:35

R. Illisley

To:

Subject:

Section 106 Agreements - Land Rear of 50 Columbia Street Huthwaite (V/2013/0336) &  
Land at John Davies Workshops Main Street Huthwaite (V/2013/0334)

Hi Rob,

I can confirm that the above Agreements have been registered as Local Land Charges with  
effect from today 08/05/2014.

Kind regards

Jane Lester

Local Land Charges Assistant

Ashfield District Council

Tel 01623 457313

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**AGREEMENT AND  
PLANNING OBLIGATION**  
Under Section 106  
Town and Country Planning act 1990  
Relating to land at John Davis Workshops Main Street Huthwaite Sutton in Ashfield  
Notts

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**LLOYDS BANK PLC**

---

- and -

**K.J.BRYAN (BUILDERS) LIMITED**

- and -

**ASHFIELD DISTRICT COUNCIL**

**DATED** *7 March* ~~2014~~

means the date upon which the Development (or where in the context so referred in this Agreement the relevant Phases) shall commence

"Commencement of Development"

means this Deed of Agreement;

"Agreement"

as amended;

means the Town and Country Planning Act 1990

"1990 Act"

meanings unless the context otherwise demands: -

1.1 In this Agreement the following words and phrases have the following

**1 DEFINITIONS AND INTERPRETATION**

Mortgagee") of the third part

Penderford Business Park Wobaston Road Wolverhampton WV9 5HZ ("the LLOYDS BANK PLC (Company No 2065) of Penderford Securities Centre

(3)

Ashfield Notts NG17 2LQ ("the Owner") of the second part; and

registered office is at John Davis Workshops Main Street Huthwaite Sutton in

K.J.BRYAN (BUILDERS) LIMITED (Company No. 01731592 ) whose

(2)

Ashfield Nottinghamshire N17 8DAH ("Council") of the first part; and

ASHFIELD DISTRICT COUNCIL of Council Offices Urban Road Kirkby in

(1)

BETWEEN: -

THIS AGREEMENT is made the 7 day of March 2017

by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56 of the 1990 Act **Save** That the term "material operation" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary laying of any access road or service media;

means the development of the Land in accordance with the Planning Permission;

**"Development"**

means a residential unit (including a house flat or maisonette) that may be built on the Land as part of the Development and reference to "Dwellings" shall be construed accordingly;

**"Dwelling"**

means the framework travel plan to be approved within 3 months of the Commencement of Development to the reasonable satisfaction of the Council and which shall set overall outcomes targets and indicators for the Site and set parameters for the requirements of the development. The document shall clarify as far as possible the timeframe for completion of individual Travel Plans and the implementation of specific measures within them including management and review;

**"Framework Travel Plan"**

Means 4% above the base rate for the time being of the Co Operative Bank Plc

**"Interest"**

means all that land at John Davis Workshops Main Street Hurthwaite Sutton in Ashfield Notts shown for identification purposes only edged red on the Plan

**"Site"**

means the planning obligations to be observed and performed by the Owner as set out in this Agreement and reference to "Planning Obligation" shall be construed accordingly;

**"Planning Obligations"**

means the plan marked 'Plan' annexed to this Agreement;

**"Plan "**

~~means a planning permission granted pursuant to Application~~

~~**"Planning Permission"**~~

means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;

**"Statutory Undertaker"**

such person as is appointed in accordance with the provisions of paragraph 1 of the Schedule;

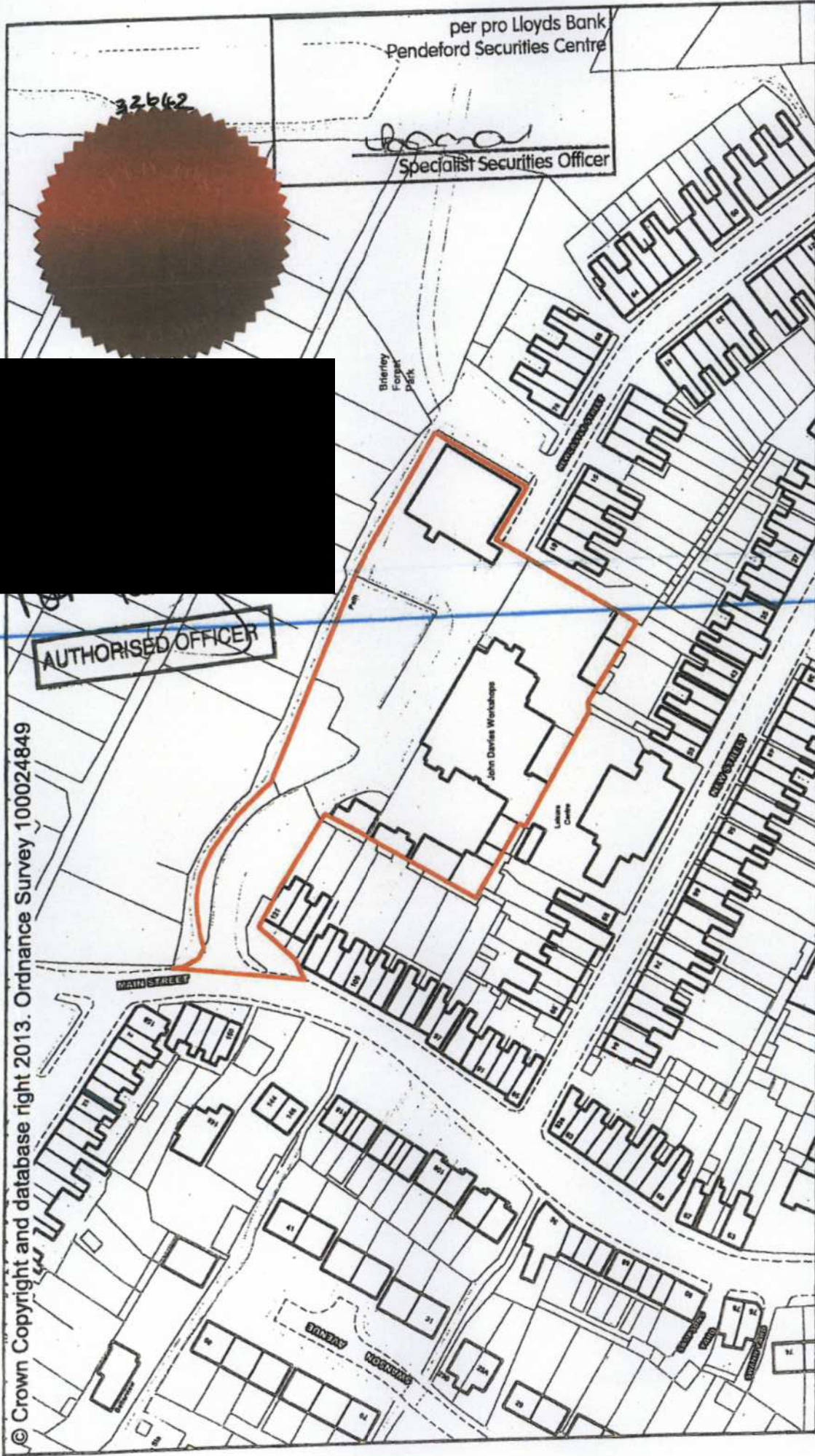
**"Travel Plan Co-ordinator"**

means the total sum of £5500.00 payable by the Owner to the Council in accordance with the provisions of paragraph 3 of the Schedule;

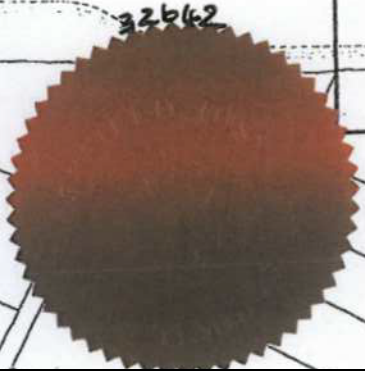
**"Travel Plan Monitoring**

**Fee"**

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AUTHORISED OFFICER



per pro Lloyds Bank  
Pendeford Securities Centre

*[Handwritten Signature]*  
Specialist Securities Officer



Scale: 1 to 1250

Date: 26 Nov 2013



**Section 106 Agreement**

2013/0334 - Outline application with all matters reserved for demolition of existing and erection of two nursing homes

1 - 7 John Davies Workshops, Main Street, Huthwaite

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**"Working Day"**

means any day except Saturday Sunday or a bank holiday and reference to "Working Days" shall be construed accordingly.

1.2 Clause headings and contents list are for reference only and shall not affect the construction of this Agreement.

1.3 Where more than one person is included in the expressions "the Council" "the Owner" and the "Mortgagee" agreements and obligations expressed to be made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.

1.4 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.

1.5 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.

1.6 A reference to an Act of Parliament refers to the Act and shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

1.7 A reference to a clause sub-clause schedule paragraph or recital (or any part of them) shall (unless the context otherwise requires) be references to a clause sub-clause schedule paragraph or recital contained in this Agreement

1.8 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.



**2 RECITALS**

2.1 The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and is the authority by whom the obligations created in the Schedule are enforceable.

2.2 The Owner is the freehold owner of the Land registered with HM Land Registry under title registration number NT 277336<sup>1</sup> and NT127024 Subject to the Charge referred to in clause 2.3 hereof but otherwise free from incumbrances

2.3 The Mortgagee is the proprietor of a Charge dated 13 December 2010 and registered at the Land Registry on the 27 January 2011

2.4 The Application was submitted to the Council on behalf of the Owner for planning permission for the Development.

2.5 The parties have agreed to enter into this Agreement with the intention that the obligations contained may be enforced by the Council and (subject as mentioned) their successors in title and assigns and with the intention that this Agreement shall bind the Owner, the Mortgagee and occupiers of the Site other than owners or occupiers of any Dwelling and any service authority and/or utility company.

2.6 The Owner by entering into this Agreement does so to create planning obligations in respect of the Land in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Agreement.

**3 OPERATIVE PROVISIONS**

3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other powers so enabling.

3.2 Subject to Clause 3.5 the Owner covenants with the Council with the intent that the covenants in the Schedule shall attach to the Site and each and every part of it and bind its successors in title to it.

3.3 The planning obligations shall not become effective until: -

~~3.3.1 The Planning Permission has been granted; and~~

3.3.2 Except where otherwise stated in this Agreement the Commencement of Development.

3.4 In this Agreement the expressions "the Owner " and "Mortgagee" shall where the context so admits be deemed to include their respective successors in title and assigns and all persons deriving title under them as stated in operative clause 3.5 and where otherwise expressly provided and the expression "the Council" shall include its respective successor authority

3.5 The Mortgagee consents to the Owner entering into this Agreement and hereby covenants with the Council to observe and perform the covenants restrictions liabilities and obligations of this Agreement as if the Mortgagee were Owner during any period in which the Mortgagee becomes a Mortgagee in possession of the Site or any part of it.

Provided Always and the parties hereby agree that

(i) where the Mortgagee becomes a mortgagee in possession of any part(s) but not the whole of the Site the Mortgagee covenants under this clause shall be related to and be binding in respect of any such part(s) only and not the

rest of the Site

(ii) for the avoidance of doubt the Mortgagees shall not have any liability under the terms of this Agreement except in the circumstances described in this clause.

3.6

The Planning Obligations restrictions covenants limitations and obligations in this Agreement relate to and are binding in their entirety upon the Owner and its successors in title and assigns and its interest in the Site and save as otherwise provided shall bind and run with the Site and each and every part of it and subject to clauses 3.5 and 3.13 may be enforced against the Owner and where applicable its successors in title by the Council respectively as if such persons had been an original covenanting Party in respect of the interest or estate for the time being held by them in the Development.

3.7

~~If the terms of any conveyance transfer or other disposal (including any contract thereof) cannot be agreed by the Owner and the Council and / or any dispute or difference arises between the parties as to their respective rights duties or obligations under this Agreement or as to the failure of the Council to give or confirm its consent agreement or approval where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter it shall be dealt with as follows: -~~

3.7.1

in the case of any legal requirements how contributions payable under this Agreement are to be spent the same shall be referred to an independent Solicitor experienced mediator or arbitrator of at least fifteen years standing who shall be appointed in default of agreement between the Owner and the Council as the case may be by the President of the Law Society or his deputy to be decided as provided below;

3.7.2 any matter referred to an independent solicitor or chartered accountant or highway and transportation engineer in accordance with the foregoing provisions shall be decided by such person as an expert not as an arbitrator and such independent person ("Expert") shall consider the written submissions of the parties and his determination shall be made in writing and in each case be final and binding on such parties and the costs of such determination shall be paid as the expert shall direct.

3.8 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) or revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.

3.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement.

3.10 Except where expressly stated to the contrary where under this Agreement any approval consent certificate direction authority agreement or response of satisfaction is required to be given or reached or taken by any Party or any response is requested any such approval consent certificate direction authority agreement or expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed provided that nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their statutory functions and the rights powers duties and obligations of the Council under private or public statutes byelaws orders and regulations may be as fully and effectively exercised as if they were not parties to this Deed.

3.11 The obligations hereby created shall be registered as a Local Land Charge by the Council.

- 3.12 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 3.13 No party shall be bound by the terms of this Agreement or be liable for any breach of covenant contained in this Agreement: -
- 3.13.1 occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- 3.13.2 if he shall be an occupier or tenant of any of the Dwellings or Units or a purchaser of an individual Dwelling or Unit;
- 
- 3.13.3 if it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.
- 3.14 If after the date of this Agreement there shall be enacted any tax relating to the grant of planning permission (whether the community infrastructure levy statutory planning charge planning gain supplement or otherwise) and the terms of such tax mean that any Planning Obligations under this Agreement or under any condition attached to the Planning Permission change or that the Owner must pay a sum to any person (whether HM Government or otherwise) which would duplicate add to or overlap with any Planning Obligation of the Owner under this Agreement the parties may agree that the terms of this Agreement may be modified at the election of the Owner to such extent as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Agreement as at the date hereof.
- 3.15 The Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement Amounting to £495,00.

3.16 The Owner agrees with the Council to give the Council immediate written notice of any change of ownership or any of its interests in the Land if applicable occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or Unit of occupation purchased by reference to a plan **PROVIDED THAT** it is agreed that this clause will not apply in respect of disposals relating to individual plot sales of Dwellings or Units.

3.17 All notices served under or in connection with this Agreement shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant Party.

3.18 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

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

3.20 The Parties to this Agreement have given due consideration to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948) and agree that the planning obligations it contains are: -

3.20.1 necessary to make the Development acceptable in planning terms;

3.20.2 directly and fairly related to the Development; and

3.20.3 fairly and reasonably related in scale and kind to the Development.

**IN WITNESS** whereof the parties hereto have executed this Deed the day and year first before written

**THE SCHEDULE**

("Owner's Planning Obligations")

Part 1

The Owner covenants with the Council as follows: -

**1. TRAVEL PLAN CO-ORDINATOR**

1.1 Prior to the Commencement of Development to appoint a Travel Plan Co-ordinator and thereafter continue to employ or engage him/her until the Development is completed. The Travel Plan Co-ordinator to be appointed shall be employed in relation to the Development throughout the travel plan period as identified in the approved Framework Travel Plan on a full time basis to perform the roles and functions set out in the Framework Travel Plan. The Travel Plan Co-ordinator shall be responsible for the implementation delivery monitoring and promotion of the sustainable transport initiatives set out in the Framework Travel Plan

Travel Plan

1.2 The Travel Plan Co-ordinator shall submit reports to update the TRICS database in accordance with the Standard Assessment Methodology (SAM) or similar to be approved and to the Council in accordance with the monitoring periods identified within the Framework Travel Plan. The monitoring reports submitted to the Council shall summarise the data collected over the monitoring period and propose revised initiatives and measures where travel plan targets are not being met including implementation dates to be approved in writing by the Council. Such Travel Plans shall categorise trip types into new trips, pass by trips, linked trips, diverted trips and transferred trips and propose revised initiatives and measures where travel plans targets are not being met including implementation dates to be approved in writing by the Council. The Travel Plan Co-ordinator shall produce monitoring reports annually for a period of 5 years following the Commencement of Development



Framework Travel Plan;

4.1.1 the measures to be adopted to implement the matters set out for it in the

4.1 The Travel Plan will set out:

**4. FRAMEWORK TRAVEL PLAN REQUIREMENTS**

the Development

Pay the Travel Plan Monitoring Fee to the Council on the Commencement of

**3.0 TRAVEL PLAN MONITORING FEE**

Council

The Travel Plan Co-ordinator shall submit and secure the written approval of the Council for the Framework Travel Plan within 3 months of the Commencement of Development **PROVIDED THAT** it is agreed that if the Council do not approve or notify the Owner of its comments on the Framework Travel Plan within 30 Working Days of receipt of the Framework Plan from the Owner (or within such other time period that the Council may reasonably require and which may be agreed in writing between the Council and the Owner within the initial 30 Working Day period) it shall be deemed that the Council has approved the Framework Travel Plan submitted by the Owner **AND FURTHER PROVIDED THAT** if agreement cannot be reached between the Council and the Owner within 60 Working Days of the date of its submission to the Council (or such other period of time that may be agreed) then the provisions of clause 3.7 relating to expert determination can be invoked by any party in relation to only those matters that are in dispute. The Framework Travel Plan shall set out final targets with respect of the number of vehicles using the Site and the adoption of measures to reduce single occupancy car travel to be approved of by the Council. The Framework Travel Plan shall be implemented in accordance with the approved timetable and be up dated consistent with future travel initiatives including implementation dates to the satisfaction of the Council

**2. FRAMEWORK TRAVEL PLAN**

If any sums or any part thereof shall not be paid prior to the Commencement of Development such sums or part shall carry interest from the date of actual Commencement of Development until actual payment and no Dwellings to be built upon the Site shall be completed whilst such sum(s) or any part thereof (including interest as aforesaid) remain unpaid

6.0 INTEREST

5.3 Following the arrangements referred to in paragraph 5.2 of this Schedule the Owner and or Framework Travel Plan Co-ordinator shall propose to the Council reasonable corrective measures necessary (in accordance with the approved Framework Travel Plan) to remedy such failure together with a programme for the implementation of such measures for the conditional approval of the Council and thereafter the Owner shall comply with such measures .

5.2 In the event that the target for modal shift for the Development is not met by the end of the Framework Travel Plan monitoring period the Council, the Framework Travel Plan Co-ordinator and the Owner shall meet to identify the failure to reach such target.

5.1 The Owners shall comply with the process for review and monitoring set out in the Framework Travel Plan including annual reports

5. MONITORING

4.1.8 shall be implemented in accordance with the approved time table and be updated consistent with future travel initiatives

4.1.7 the adoption of measures to reduce single occupancy car travel to be approved by the Council

4.1.5 set out final targets with respect of the numbers of vehicles using the Site

4.1.5 such other matters that are agreed between the Owners and the Council.

4.1.4 the steps that will be taken if targets are not met; and

4.1.3 the process for review and monitoring;

4.1.2 the programme for implementing such measures;



**SIGNED as a DEED (but not delivered until )**  
**the date hereof) on behalf of )**  
**LLOYDS BANK LIMITED in the presence )**  
of: -



Factor

Factor/Secretary