

DATED

2022

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET

and

VISION RESIDENCES (PHASE TWO) LLP

DEED OF PLANNING OBLIGATION

made pursuant to Section 106 of the Town and Country Planning Act 1990 and all enabling powers relating to the development of land at
Land Jeanettes, North of The Ridgeway, Barnet NW7 1EL
in the London Borough of Barnet
APPLICATION REF: 22/0650/FUL

HB Public Law

PO Box 2

Civic Centre

Harrow, Middlesex

HA1 2UH

DX 30450 HARROW 3

Ref: EBAC-PH001-07717

THIS DEED is made the day of

2022

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET** of 2 Bristol Avenue, Colindale, London NW9 4EW ("**the Council**");
and
- (2) **VISION RESIDENCES (PHASE TWO) LLP** (LLP Regn. No. 0C378370) of C/O RMPI LLP, Moss House, 15-16 Brook's Mews, London W1K 4DS ("**the Owner**")

WHEREAS:

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and by which the obligations in this Deed are enforceable.
- (B) The Owner is the proprietor of the freehold interest of the Land registered at HM Land Registry under title number AGL178295.
- (E) The Application was submitted by the Owner to the Council, which the Council resolved on 1 September 2022 at Planning Committee A to grant planning permission subject to the prior completion of this Deed.
- (E) The Council considers it expedient in the interests of the proper planning of its area and having regard to the development plan and to all other material considerations that provision should be made for regulating or facilitating the Development in the manner set out in this Deed.
- (F) The Parties are satisfied that the planning obligation secured by this Deed is necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.
- (G) The Parties have therefore agreed to enter into this Deed to secure the planning obligations with the intention that the same should be binding not only upon the Parties but also upon their successors in title and any persons

claiming title through under or in trust for them unless as otherwise specified in this Deed.

NOW THIS DEED WITNESSES as follows:-

1 INTERPRETATION

1.1 For the purposes of this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:-

“1990 Act” means the Town and Country Planning Act 1990

“Application” means the application made by the Owner for full planning permission to carry out the Development on the Land and bearing reference number 22/0650/FUL

“Belmont Farm Childrens’ Day Nursery” means the childrens’ day nursery adjacent to the Land at Belmont Farm, The Ridgeway, London NW7 1QT, including:
(i) any replacement or similar business; resulting in the need for employee accommodation by Nursery Staff

“Borough” means the administrative area of the London Borough of Barnet

“Commencement of Development” means commencement of the Development by the undertaking of a material operation as defined by section 56(4) of the 1990 Act PROVIDED ALWAYS THAT:
(a) ground investigations and/or site survey

works;

(b) diversion decommissioning and/or laying of services and service media for the supply or carriage of electricity gas water sewerage telecommunications or other utilities media or services;

(c) construction of temporary boundary fencing or hoardings;

(d) temporary diversion of highways;

(e) archaeological investigation;

(f) noise attenuation works;

(g) demolition works;

(h) works of site clearance;

(i) remediation works;

(j) evacuation works to adjust ground levels on site;

(k) construction of access to the Site; and

(l) temporary display of advertisements

shall not be taken to be a material operation for the purposes of this Deed and “Commence Development”, “Commencement” “Commenced” and “Commences” shall be construed accordingly

“Deed”

means this agreement

“Development”

means the erection of a single storey building with rooms in the roof space to provide 7 no dwellings. Associated cycle,

refuse and recycling space. Provision of off street parking and amenity space

“Expert”

means an independent person holding appropriate professional qualifications appointed in accordance with the provisions of clause 9 of this Deed

“Index”

means the “All Items” Retail Prices Index published by the Office for National Statistics (or any successor ministry department or organisation) or if such index is at the relevant time no longer published such other comparable index or basis for indexation as the Parties may agree

“Index Linked”

means the product (if any) of the amount of the Contributions payable under this Deed multiplied by A and divided by B where:

"A" is the most recently published figure for the Index prior to the date of the payment; and

"B" is the most recently published figure for the Index at the date of this Deed

“Interest”

means interest at 4% (four percent) above the base lending rate of the Co-operative Bank Plc or such other bank as the Council may specify from time to time

“Land”

means the land at Jeanettes, Land North of The Ridgeway, Barnet NW7 1EL registered under title number AGL178295 upon which

the Development on the Site is to take place and against which the obligations in this Deed may be enforced shown for the purpose of identification only edged red on the Site Plan

“Local Teachers”

means teachers or those involved in the provision of education

“Monitoring Contribution”

means the sum of £500.00 (Five Hundred Pounds) Index-Linked (towards the Council's costs of monitoring the planning obligation in this Deed

“Nursery Staff”

means those employed as staff at the Belmont Farm Childrens' Day Nursery or alternatively Local Teachers in the Borough

“Occupation”

means occupation of the Development for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in demolition, construction, fitting out, decoration, marketing, or for site security purposes and **"Occupy"** and **"Occupiers"** shall be construed accordingly

“Party”

means each of the Council and the Owner

“Planning Permission”

means the planning permission for the Development to be granted by the Council pursuant to the Application substantively in the form of the draft decision notice at Schedule 2

- “Section 73 Permission”** means a subsequent planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition attached to the Planning Permission
- “Site”** means the land shown edged red on the Site Plan
- “Site Plan”** the plan attached to this Deed at Schedule 1
- “Statutory Undertaker”** means a statutory undertaker as defined by section 262 of the 1990 Act and Article 2(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015
- “Working Day”** means a day that is not a Saturday, Sunday or public holiday in England

1.2 In this Deed:

- 1.2.1 reference to any statutory provision or enactment shall include reference to any statutory re-enactment thereof and any statutory instrument regulation or order made under it which is for the time being in force;
- 1.2.2 the headings in this Deed are for convenience only and shall not be deemed to be part of, or taken into consideration in the interpretation of this Deed;
- 1.2.3 reference to any clause sub-clause paragraph or schedule are references to clauses sub-clauses paragraphs or schedules in this Deed;

- 1.2.4 unless the context otherwise requires words importing the singular meaning shall include the plural and vice versa;
- 1.2.5 words of the one gender include other genders and words denoting actual persons include bodies corporate companies corporations and firms and all such words shall be construed as interchangeable in that manner;
- 1.2.6 words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to allow cause permit or suffer any infringement of the restriction;
- 1.2.7 covenants made in this Deed if made by more than one person are made jointly and severally unless otherwise expressly stated;
- 1.2.8 reference to any Party to this Deed shall include the successors in title to that Party and in the case of the Council shall mean any successor to its respective statutory functions.

2 STATUTORY AUTHORITY AND ENFORCEABILITY

- 2.1 This Deed is entered into under section 106 of the 1990 Act for the purposes of creating planning obligations in respect of the Land and subject to clause 2.2, all the restrictions covenants and undertakings in this Deed are planning obligations for the purposes of Section 106 and are (subject to the terms of this Deed) enforceable by the Council not only against the Owner but also against any successors in title to the respective interests of the Owner (unless otherwise stated in this Deed).
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into by the Council pursuant to the powers contained in section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.

3 EFFECT AND CONDITIONALITY OF THIS DEED

The provisions of this Deed shall become binding following:

3.1.1 the grant of the Planning Permission; and

3.1.2 the Commencement of Development

save for the provisions of clause 2 (Statutory Authority and Enforceability) clause 4.2 (Fees), clause 9 (Dispute Provisions), clause 14 (Notices) and clause 20 (Jurisdiction) which shall come into effect on completion of this Deed.

4 OWNER'S AND COUNCIL COVENANTS

4.1 The Owner covenants with the Council to perform the obligations set out in Schedules 3 and 4 to this Deed.

4.2 The Owner covenants to pay on or before completion of this Deed the Council's reasonable legal costs incurred in connection with the negotiation, preparation and execution of this Deed.

5 EXCLUSIONS

This Deed shall not bind or be enforceable against the following:-

- i. any persons after they have disposed of all of their interests in the Land (or in the event of a disposal of part against the part disposed of) so that such persons shall be released from all liability contained in this Deed but this release shall be without prejudice to the liability of any such person for any subsisting breach of this Deed prior to parting with such interest;
- ii. lessees, tenants or Occupiers of the Dwelling; and
- iii. any Statutory Undertaker or other person with any interest in any part of the Land for the purpose of the supply of electricity gas water drainage telecommunication services or public transport services.

6 DETERMINATION OF THE PLANNING PERMISSION

6.1 Without prejudice to any of the obligations which come into force on or before the date of this Deed it is agreed and declared that this Deed shall cease to have any further effect in the event that:-

- (a) the Planning Permission shall lapse without having been implemented;
or
- (b) the Planning Permission shall be revoked; or
- (c) if the Owner shall before Commencement of Development implement any subsequent planning permission for the permanent redevelopment of the Land which prevents implementation of the Planning Permission in accordance with its terms; or
- (d) if the Planning Permission is quashed on judicial review without being thereafter re- granted by the Council.

6.2 In the event that this Deed ceases to have effect as a result of the occurrence of any of the events set out in this clause 6 the Council shall effect the cancellation of all entries made in the register of local land charges in respect of this Deed.

6.3 This Deed is intended to regulate and restrict the carrying out of the Development and shall not prohibit or restrict the carrying out of any other development which may be authorised by any planning permission other than the Planning Permission.

7 CONSENT AND GOOD FAITH IN RELATION TO THIS DEED

7.1 It is hereby agreed and declared that any agreement approval consent confirmation comment or declaration or expressions of satisfaction required from any of the Parties under the terms of this Deed shall not be unreasonably withheld or delayed and shall be given in writing.

7.2 The Council shall not be required to pay any costs in the giving of any such agreement approval consent confirmation comment or declaration or

expressions of satisfaction referred to in clause 7.1 from the Council to any other Party to this Deed.

8 VERIFICATION AND ENFORCEMENT

The Owner shall permit the Council and its authorised employees and agents upon reasonable request and reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed has been performed or observed **SUBJECT TO** compliance by the Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice.

9 DISPUTE PROVISIONS

- 9.1 In the event of any dispute or difference arising between the Parties in respect of any matter contained in this Deed (including any failure by the Parties to agree or approve any matter falling to be agreed or approved under this Deed) which cannot be resolved by prior agreement between the Parties then unless the relevant part of the Deed indicates to the contrary, such dispute or difference shall be referred to an Expert to be agreed by the Parties, or in the absence of agreement, to be appointed, at the request of any of the Parties, by or on behalf of the president for the time being of the professional body chiefly responsible for dealing with such matters as may be in dispute and the decision of such an Expert shall be final and binding on the Parties.
- 9.2 The Expert shall be appointed subject to an express requirement that the Expert shall reach a decision and communicate it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days from the date the Expert receives the written submissions of the Parties pursuant to clause 9.3.
- 9.3 The Expert shall be required to give notice to each Party inviting each to submit within ten (10) Working Days of the Expert's appointment, written submissions and supporting material and shall afford each Party a further five

(5) Working Days to make counter-submissions to the written submissions of any other Party.

9.4 The Expert's costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties in equal shares.

9.5 The provisions of this clause 9 shall not fetter the Council's power to enforce this Deed by way of an application for declaratory relief or injunction.

10 POWERS OF THE COUNCIL

Nothing in this Deed shall fetter or restrict or prejudice or affect the rights discretions powers duties and obligations of the Council in the exercise of its statutory functions under any enactment (whether public or private) statutory instrument regulation byelaws order or power for the time being in force.

11 WAIVER

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants terms conditions undertakings obligations or restrictions contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants terms conditions undertakings obligations or restrictions or from acting up on any subsequent breach or default in respect thereof by the Owner.

12 SEVERABILITY

12.1 Each clause sub-clause schedule or paragraph in this Deed shall be separate distinct and severable from each other to the extent only that if any clause sub-clause schedule or paragraph becomes or is invalid because 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 therein.

12.2 If any provision in this Deed is held to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

13 SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

Subject to the payment of the Council's reasonable costs and charges in connection with certification, the Council will upon the written reasonable request of the Owner at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged as soon as is reasonably practicable cancel all entries made in the Register of Local Land Charges in respect of this Deed.

14 NOTICES

14.1 Unless otherwise expressly stated, any notice, notification, amendments to approved documents, consent or approval or demand for payment required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post or recorded delivery or by commercial courier as follows:

- (a) in the case of the Council at the address for the Council stated at the head of this Deed or any other address previously notified by the Council in writing;
- (b) in the case of the Owner at the address for the Owner stated at the head of this Deed or any other address previously notified by the Owner in writing;
- (c) in the case of any successors in title to the Owner, to their registered office address or any other address provided to the Parties.

14.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause 14;
- (b) if sent by pre-paid first class post or recorded delivery, on the 2nd Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

15 CHANGE OF OWNERSHIP

The Owner covenants to give the Council written notice of any change in ownership of any of its legal interests in the Land occurring before all the planning obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the new owner's full name and postal address together with the area of the Land purchased by reference to a plan or postal address (or registered office if a company) **PROVIDED ALWAYS THAT** the Owner shall not be required to give any such notice to the Council where the new owner is a Statutory Undertaker or similar utility provider.

16 SECTION 73 PERMISSION

In the event that a Section 73 Permission is granted the Parties acknowledge that the obligations in this Deed shall bind the Land in respect of that consent **PROVIDED THAT** the Council when determining any Section 73 application relating to the Land shall not be restricted from requiring that any consequential obligations of an appropriate nature (so far as they are materially different to those contained in this Deed) be secured by way of a new deed or supplemental deed or deed of modification pursuant to Section 106 (or Section 106A) of the 1990 Act.

17 INTEREST ON LATE PAYMENT

Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if payment of any sum referred to in this Deed becomes due and remains unpaid then the Owner shall pay the Council Interest on such unpaid sum from the date when it became due to the date it is paid in full to the Council.

18 THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and as such a person who is not named in this Deed shall not have a right to enforce any of its terms **PROVIDED ALWAYS THAT** nothing in this Deed shall prevent any successors in title to any of the Parties from being able to benefit or to enforce the provisions of this Deed (and in the case of the Council) the successor to its respective statutory functions.

19 REGISTRATION OF THIS DEED

This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

20 GOVERNING LAW AND JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and subject to the exclusive jurisdiction of the English courts.

IN WITNESS of which this Deed has been executed by the Parties as a Deed and delivered on the day and year first above written.

SCHEDULE 1 - PLAN

SCHEDULE 2 - DRAFT DECISION NOTICE

SCHEDULE 3 - NOTIFICATION

The Owner hereby covenants that it shall give to the Council at the address stated at the head of this Deed (or such other address as the Council shall have previously notified to it) no less than twenty (20) Working Days prior written notice of the intended date of:

- (a) Commencement of the Development; and
- (b) First Occupation of the Development.

SCHEDULE 4 –HOUSING ACCOMMODATION

The Owner hereby covenants with the Council:

1. Not to permit or cause any of the flats to be Occupied other than by Nursery Staff as accommodation in association with the adjacent Belmont Farm Childrens' Day Nursery; or
2. If any flats are not Occupied in accordance with paragraph 1 of this Schedule 4, the flats shall only otherwise be Occupied by persons employed as Local Teachers in the Borough
3. Not to charge Rent in excess of 75% of open market rent of new built properties within a 2 mile radius of the Site

SCHEDULE 5 - COUNCIL COVENANTS

The Council hereby covenants with the Owner as follows:

1. The Council spend (or commit for expenditure) the Contribution solely for the purposes specified in this Deed or for such other purposes for the benefit of the Development as the Council and the Owner may agree from time to time.
2. The Council shall if requested by the Owner in writing, to provide evidence of how the Contribution have been used or committed for expenditure.
3. The Council shall on the expiration of a 10 (ten) year period from the date of payment any Contribution not committed to expenditure in accordance with the provisions of this paragraph shall be upon the written application of the payor be repaid to the payor within sixty (60) Working Days from the end of that period together with any interest that has accrued.

THE COMMON SEAL of THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF BARNET was hereunto)
affixed in the presence of:)

Authorised Signatory

EXECUTED AS A DEED by)
VISION RESIDENCES (PHASE TWO))
in the presence of:)