

Date

30th January

2013

HERTFORDSHIRE COUNTY COUNCIL

- and -

WELWYN HATFIELD BOROUGH COUNCIL

- and -

GASCOYNE HOLDINGS LIMITED

Deed of Agreement pursuant to S.106
Town and Country Planning Act 1990
(as amended) in relation to the
development of Site at Salisbury Square
Hatfield Herts

KATHRYN PETTITT
Chief Legal Officer
County Hall
Hertford
SG13 8DE
REF: DU 1597

Date

30th January

2013

PARTIES

- 1 HERTFORDSHIRE COUNTY COUNCIL of County Hall Hertford Hertfordshire SG13 8DE ("the County Council")
- 2 WELWYN HATFIELD BOROUGH COUNCIL of The Campus Welwyn Garden City Hertfordshire ("the First Owner")
- 3 GASCOYNE HOLDINGS LIMITED (Co. Regn. No 00376458) whose registered office is situate at 22 Chancery Lane London WC2A 1LS ("the Second owner")

WHEREAS

1. The County Council is a local planning authority for the purposes of the 1990 Act for the area in which the Site is situate and as such is the local planning authority entitled to enforce the planning obligations hereinafter recited
2. The County Council is the Highway Authority the Education Authority the Libraries Authority and the Social Services Authority for Hertfordshire
3. The First Owner is the freehold owner registered at the Land Registry under title number HD440259 of that part of the Site hatched brown on the Plan
4. The Second Owner is the freehold owner registered at the Land Registry under title number HD131933 of that part of the site hatched blue on the Plan
5. The Second Owner has submitted the Planning Application to Welwyn and Hatfield Borough Council ("the Council")
6. On 1 March 2012 the Council resolved to grant the Planning Permission subject, among other things to the prior completion of this Deed
7. This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

NOW THIS DEED WITNESSETH as follows:

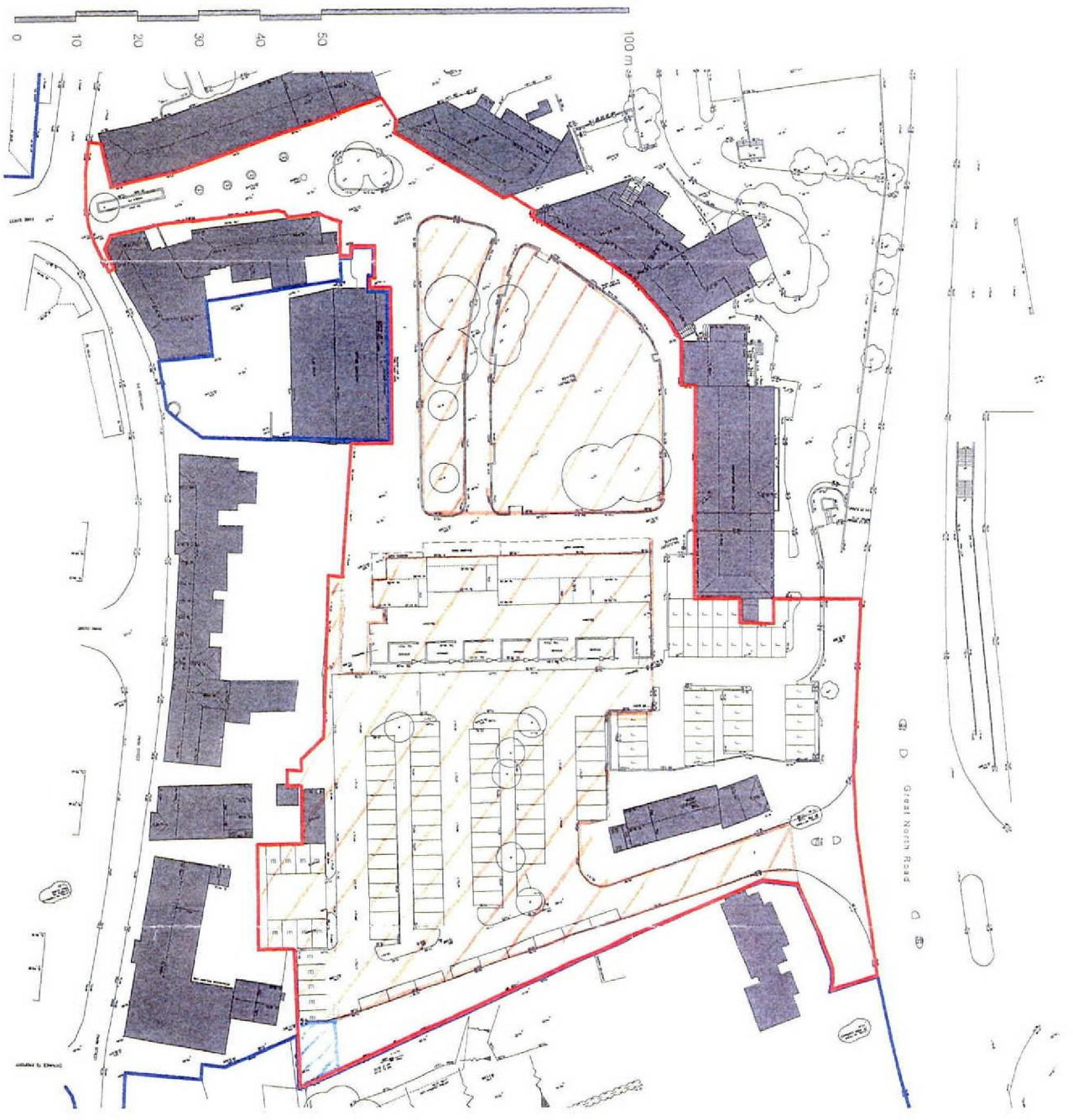
OPERATIVE PART

1. DEFINITIONS

X 12c



Scale : 1:1250



Scale : 1:500

V. P. P. P. P.



MAYOR
Paul Brink
Authorized Officer

NOT FOR CONSTRUCTION
This drawing is for information only and should not be used for construction purposes. It is not a contract document. The client is responsible for ensuring that the drawing is used for the intended purpose. The drawing is the property of Brooks / Murray Architects and should not be reproduced without their written consent.

PARKINGS
Public 62
Job site 31
Existing private 13
Grand total 106

It is assumed that out of the 62 public spaces, 10 will be used for existing commercial and residential units on the site of the 2nd and 3rd buildings and 50 for the road. Based on VMC parking standards.

Parking key
J = Job site parking
E = Existing private parking
Unmarked spaces are public.

Created in conjunction with 789-109 Proposed Job Plan.

- Revisions
- 17.1.11 A Revised red line and roadwork added
 - 25.1.11 B Scaled 1:1250 plan added
 - 27.1.11 C Blue line added
 - 28.1.11 D P Action revisions drawing number 789 SK 001 D
 - 29.1.11 E P Action revisions
 - 31.1.11 F Red line revision
 - 04.02.11 G Red line revised. Trees added
 - 18.03.11 H Drawing number changed, previously known as 789-001 G
 - 26.03.11 I Parking nodes added
 - 31.03.11 J Parking nodes amended
 - 02.06.11 K Redline amended/ issued for comment



BROOKS / MURRAY

ARCHITECTS
89 NEW NORTH GATE
LONDON EC2A 4LR
TEL: 020 7739 2888
FAX: 020 7739 2944
brooks@murray.com

CLIENT
GASCOYNE OECIL ESTATES

JOB
Salisbury Square

DATE
Jan 2011

DRAWING TITLE
Existing Site plan

DRAWING NUMBER
789-010 K

1.1. In this Deed the following expressions shall have the following meanings:-

1.1.1. "the 1990 Act" means the Town and Country Planning Act 1990 (as amended);

1.1.2. "Childcare Contribution" means the sum of nine hundred and fifty four pounds (£954.00) (indexed linked as hereinafter provided) to provide childcare facilities serving the locality of the Development

1.1.3 "Commencement Date" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out (which for the avoidance of doubt may or may not be a party to this Deed) and "Commence", "Commences", "Commencement" and "Commenced" shall be construed accordingly;

1.1.4 "Development" means the redevelopment of the Site with the demolition of the existing shopping parade building; construction of new road and layout of public spaces; erection of new building containing 19 flats and 4 shops; new car park; erection of terrace of five houses as set out in the Planning Application;

1.1.5 "Director of Environment and Commercial Services" means the County Council's Director of Environment and Commercial Services for the time being and his agents;

1.1.6 "Fire and Rescue Service" means that part of the County Council known as the Hertfordshire Fire and Rescue Service

1.1.7 "Primary Education Contribution" means the sum of fifteen thousand two hundred and thirteen pounds (£15,213) (indexed linked as hereinafter provided) towards the cost of primary educational facilities serving the locality of the Development;

1.1.8 "Interest" means the rate from time to time prescribed under the Land Compensation Act 1961;

1.1.9 "Libraries Contribution" means the sum of two thousand and eight five pounds (£2,085) (indexed linked as hereinafter provided) towards the cost of additional library facilities serving the locality of the Development;

1.1.10 "Occupy" "Occupation" and "Occupied" means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

1.1.11 "Owners" means the First Owner and the Second Owner jointly and severally

1.1.12 "Plan" means the plan annexed to this Deed;

1.1.13 "Planning Application" means the application for full planning permission dated 28 September 2011 bearing the Council's reference number 2011/1994

1.1.14 "Planning Permission" means the permission to be granted by way of approval of the Planning Application or from any reserved matters submissions or resulting from any other planning application covering all or part of the Site for any of the uses comprised in the Planning Application whether granted by variation alteration substitution addition or replacement PROVIDED THAT if any form of development within the Site which individually or in combination with any other permission for development would lead to levels of development exceeding those set out in the Planning Application that development shall be subject to additional planning obligations;

1.1.15 "PUBSEC Index" means the Department of Business Innovation and Skills Tender Price Index of Public Sector Non Housing Smoothed All-In Index;

1.1.16 "Site" means the freehold property situate at Salisbury Square, Old Hatfield Hertfordshire all of which land is shown for identification purposes only edged red on the Plan

1.1.17 "Water Scheme" means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus OR where existing water services are to be used it shall mean the details of the residential dwellings and the water supply to them which shall be provided by the Owner for the written approval of the Fire and Rescue Service prior to commencement of the construction of any residential dwelling to be constructed as part of the Development

1.1.18 "Working Day" means any day other than a Saturday or a Sunday or a Public Holiday;

1.1.19 "Youth Contribution" means the sum of one hundred and seventy pounds (£170.00) (indexed linked as hereinafter provided) towards the cost of [additional] facilities for young people within the locality of the Development

1.2. In this Deed:-

- 1.2.1. the clause headings do not affect its interpretation;
- 1.2.2. words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;
- 1.2.3. the reference to any statute or section of a statute includes 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;
- 1.2.4. any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;
- 1.2.5. references to the Site include any part of it;
- 1.2.6. where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually;
- 1.2.7. references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the County Council the successors to their respective functions;
- 1.2.8. any covenant by the Owners not to do any act of thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owners to do any act matter or thing include an obligation to procure that it be done;

2. EFFECT OF THIS DEED

- 2.1. This Deed is entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the County Council;
- 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 pursuant to the powers contained in Section 111 Local Government Act 1972, Section 2 Local Government Act 2000 and all other enabling powers;

- 2.3. The Owners enter into the obligations for themselves and their successors in title with the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owners but also against the successors in title of the Owners and any person claiming through or under the Owners an interest or estate in the Site or any part thereof
- 2.4. The Owners shall not be liable for breach of any covenants or obligations occurring after they have parted with all of their interest in the Site PROVIDED THAT liability will remain for any breach occurring prior to the parting of such interest. Neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause.

3. CONDITIONALITY

- 3.1 This Deed is conditional upon the grant of the Planning Permission
save for the provisions of Clauses 1,4(iv), 5.1, 5.2 and 9 which shall come into effect immediately upon completion of this Deed

4 OWNERS' COVENANTS

- 4.1. The Owners covenants with the County Council jointly and severally:-
 - 4.1.1. to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto; and
 - 4.1.2. to give the County Council no less than five (5) Working Days notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the proforma set out in Schedule 2 hereto; and
 - 4.1.3. to give the County Council no less than five (5) Working Days notice of the Occupation of the Development/Completion of the Development such notice to be in writing using the proforma set out in Schedule 2 hereto; and
 - 4.1.4. upon completion of this Deed pay to the County Council their costs in connection with the preparation negotiation and completion of this Deed.

5 COUNTY COUNCIL'S COVENANTS

- 5.1. The County Council hereby covenants with the Owners to use all sums received from the Owners under the terms of this Deed for the purpose(s) specified in this Deed for which they are paid

5.2. The County Council further covenants with the Owners that:

5.2.1. it will pay to the Owners a sum, equal to the amount of any payment made by the Owners to the County Council under this Deed which has not been expended or allocated for spending in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the County Council of such payment together with Interest on such unexpended sum from the date of receipt to the date of payment; and that

5.2.2. if the Development is not commenced within five (5) years of the date of the Planning Permission it will pay the Owners a sum equal to the amount of any payment made by the Owners to the County Council together with interest on such sum from the date of receipt to the date of payment

5.2.3. Any refund pursuant to clause 5.2.2 will be paid to the Second Owner.

6 EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS

6.1. If prior to the receipt of any of the Primary Education Contribution the Libraries Contribution the Youth Contribution or the Childcare Contribution the County Council incurs any expenditure in providing additional education libraries youth and childcare facilities as the case may be the need for which arises from or in anticipation of the Development then the County Council may immediately following receipt of the Primary Education Contribution the Libraries Contribution the Youth Contribution or the Childcare Contribution as the case may be deduct from the Primary Education Contribution the Libraries Contribution the Youth Contribution the Childcare Contribution as appropriate such expenditure incurred

7 INDEXATION

7.1 The Libraries Contribution, the Childcare Contribution the Youth Contribution and the Primary Education Contribution shall each be index linked by reference to the PUBSEC Index figure of 175 to the figure applicable to the quarter in which the contribution is paid

7.2 Where any sum is required to be index linked by reference to the PUBSEC Index that sum payable shall be increased or decreased in accordance with any change in the Department of Business Innovation and Skills Tender Price Index of Public Sector Non-Housing (PUBSEC) Smoothed All-in Index by the application of the formula $A = B \times (C \div D)$ where:-

A is the total amount to be paid;

B is the principal sum stated in this deed;

C is the PUBSEC Smoothed All-in Index for the date upon which the interim payment described below is actually paid and;

D is the figure of 175

7.3 Where any sum to be paid to the County Council under the terms of this Deed is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised

8 MISCELLANEOUS

- 8.1. The Owners hereby warrant that they are the owners of the freehold of the Site and that no other party has an interest in the Site save as disclosed in writing to the County Secretary of the County Council prior to completion of this Deed
- 8.2. This Deed shall be registered as a local land charge by the Council
- 8.3. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto
- 8.4. Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

In respect of the Owner	In respect of the Council	In respect of the County Council
The Company Secretary, Gascoyne Holdings Limited, 22 Chancery Lane, London WC2A 1LS	The Director (Strategy and Development) Welwyn Hatfield Borough Council, Council Offices Welwyn Garden City Hertfordshire AL8 6AE	The Chief Legal Officer, Hertfordshire County Council, County Hall Pegs Lane, Hertford Herts SG13 8DE (Ref: DU1597)

Save that notices pursuant to paragraph 2 of Schedule 1 (Fire Hydrants) shall be sent to the person mentioned in paragraph 2.5 of Schedule 1

- 8.5. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 8.6. Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority
- 8.7. No waiver whether express or implied by the County Council of any breach or default by the Owners in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 8.8. This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not been initiated in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission save for the provisions of Clauses 5.1 and 5.2
- 8.9. Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the County Council or any officer of the County Council is required for any purpose under or in connection with the terms of this Deed such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed
- 8.10. Without prejudice to the County Council's statutory rights the Owners hereby grant to the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter the such parts of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed.

9 VALUE ADDED TAX

- 9.1. All consideration given in accordance with the terms of this Deed shall be exclusive of any valued added tax properly payable

10 JURISDICTION

- 10.1. This Deed is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS whereof the parties hereto have executed this Deed but the same remains undelivered until the day and year first before written

SCHEDULE 1

The Owners Covenants Stipulations and obligations

Libraries Contribution Youth Contribution Childcare Contribution Nursery Contribution and Primary Education Contribution

1. To pay the Libraries Contribution the Youth Contribution the Childcare Contribution the and the Primary Education Contribution to the County Council on completion of this Deed

Fire Hydrants

- 2.1 To ensure that the Water Scheme incorporates fire hydrants in accordance with BS 750 (2006) as reasonably and properly required by the Fire and Rescue Service AND not to Commence or permit Commencement of the Development until the Water Scheme has been submitted to and approved in writing by the Fire and Rescue Service such approval not to be unreasonably withheld or delayed
- 2.2 To construct and provide at no cost to the Fire and Rescue Service or the County Council the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Fire and Rescue Service in writing of the date upon which each and every fire hydrant becomes operational
- 2.3 Once operational to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take effect from the date of issue of written acceptance by the County Council's Chief Legal Officer the issue of which shall not be unreasonably delayed

- 2.4 Not to Occupy nor cause nor permit Occupation of any building forming part of the Development until such time as it is served by an adopted fire hydrant
- 2.5 To address any notice to be given to the Fire and Rescue Service to the Water Services Officer, Fire and Rescue Service, Old London Road Hertford SG13 7LD Telephone 01992 507521

SCHEDULE 2

PROFORMA

EVENT NOTIFICATION AND PAYMENT

PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE.....

HCC DU REFERENCE

SITE ADDRESS

.....

.....

.....

SITE OWNER DETAILS

Name

Contact name

Address

.....

.....

Telephone nos.

Main

Mobile

Email

EVENTS BEING NOTIFIED

Commencement Date – date :.....

Occupation of Development (Number if relevant) – date:.....

Completion of Development – date:

The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)



KP Pettitt
Kathryn Pettitt
Chief Legal Officer

The COMMON SEAL of)
WELWYN HATFIELD)
BOROUGH COUNCIL)
was hereunto affixed to this)
Deed in the presence of:-)



H. B. ...
MAYOR
Robert Baloch
Authorised Officer

Executed as a Deed by)
GASCOYNE HOLDINGS)
LIMITED)
acting by a director)
in the presence of:-)

12 Clam.
pws clam

S. Symonds