

THIS AGREEMENT is made the 2<sup>nd</sup> day of November One Thousand Nine Hundred and Ninety Three BETWEEN WELWYN HATFIELD DISTRICT COUNCIL of the Council Offices The Campus Welwyn Garden City Hertfordshire AL8 6AE (hereinafter called "the Council" which expression shall include its successors in title) of the one part and ADMIRAL HOMES LIMITED of Jansel House Stopsley Luton Bedfordshire LU2 7XJ (hereinafter called the "Developer") of the other part

## WHEREAS:

1. The Council is a Local Planning Authority for the purpose of the Town and Country Planning Act 1990 for the areas of land shown for the purpose of identification only edged red on the attached plan and marked "Areas 1 2 and 3" (hereinafter collectively called "the Land") and for the area of land edged blue on the attached plan (hereinafter referred to as "the Blue Land")
2. The Council is also a Principal Council within the meaning of Section III of the Local Government Act 1972
3. The Council and the Developer have jointly agreed that the Developer will apply to the Council for planning permission for the development of the Land and the Blue Land for housing purposes and that part of the development located on the Land shall be referred to hereafter as "Development 1" and the part located on the Blue Land shall be referred to hereafter as "Development 2"
4. The Council and the Developer have agreed that certain works to the public highway edged brown brown hatched and green on the attached plan as set out in Clause 2(b) hereof (hereinafter collectively called "the Works") will be carried out on the terms conditions and stipulations hereinafter appearing to facilitate Developments 1 and 2
5. (a) The Council is the freehold owner of the Land  
  
(b) The Council is also presently the owner of the freehold of the Blue Land but has on the date hereof exchanged contracts with the Developer for the sale of the Blue Land to the Developer

6. (a) The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 insofar as they fall within the terms of Sub-Section 1 thereof
- (b) Insofar as the obligations contained herein are not planning obligations within Section 106 of the said Act the covenants are entered into pursuant to Section 111 of the Local Government Act 1972 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982
- (c) The Council is for the purposes of the said Section 106 the Local Planning Authority empowered to enforce the planning obligations herein contained

NOW THIS AGREEMENT WITNESSETH as follows:

1. Clause 2(a) to (d) of this Agreement shall have immediate effect but otherwise this Agreement is conditional upon the grant of planning permission for the development of the Land and the Blue Land pursuant to the application to be lodged by the Developer under Clause 2(c) hereof
2. The Developer for itself and its successors in title hereby covenants with the Council as follows:-
  - (a) The Developer will produce a scheme acceptable to the Council (such acceptance not to be unreasonably withheld or delayed) for housing development on the Land and on the Blue Land of which at least 20% of the total number of housing units shall comprise affordable housing comprising one bedroomed units and for avoidance of doubt it is hereby agreed and declared that such 20% minimum may be provided on the Land together with part of the Blue Land if required and such 20% minimum shall be deemed to satisfy the Council's affordable housing provision on the Land and the Blue Land
  - (b) The scheme referred to in paragraph (a) above will retain Area 2 as open space may provide for development on the land edged brown on the attached plan and will provide for the Works namely:-

- (i) the stopping up of the land edged brown
  - (ii) the retention of the land hatched brown as public footpaths unless the Developer has agreed an alternative route with the Highway Authority
  - (iii) a cycleway/footpath of a maximum of 3.3 metres in width and a noise attenuation band of a maximum height of 3.5 metres or such other reduced measurement as the Council may agree such works to be carried out at the Developer's expense on the land edged green or part thereof as shown on the plan annexed hereto including the Developer entering into an agreement pursuant to Section 38 of the Highways Act 1980 if necessary relating to that part of the green land comprising approximately 1 metres width and which is contiguous with or forms part of the Blue Land and for its subsequent maintenance by the Council as an amenity area in return for an appropriate commuted sum
- (c) The Developer will apply for planning permission to develop both the Land and the Blue Land in accordance with sub-clauses (a) and (b) above
- (d) Until planning permission is obtained in respect of the development of the Land and the Blue Land the Developer will not involve any third party except the Council's successors in title if any in any way which would detract from the comprehensive planning nature of the whole development Provided always that the involvement of a Housing Association nominated by the Council shall be deemed not to detract therefrom
- (e) The Developer will enter into the JCT standard form of Building Contract with contractors design 1981 edition as amended in the form attached as a Schedule hereto with the Council or its successor in title upon completion of the stopping up procedures relating to the land edged brown (provided always the Council has complied with its

obligations referred to in Clause 3(b) hereof and the required stopping up has been achieved) to enable the Developer to act as contractor in respect of Development 1 and in respect to the building works on the Land:-

- (i) the Developer shall agree a programme for the building works with the Council or its successor in title prior to commencement thereof
- (ii) the Developer shall agree the Contract sum in respect of the building works with the Council or its successor in title such sum to represent only costs attributable to the affordable homes element of Developer 1 prior to commencement of the building works
- (iii) in the event that the Council or its successor in title considers the Contract sum and or the programme of building works unreasonable the Developer agrees that the Council or its successor in title may reserve the right to procure the carrying out of building works in respect of Development 1 by a different contractor and the Developer hereby covenants that they will in such an event transfer the copyright of any plans or other documents relating to Development 1 to the Council or its successor in title or duly authorised representatives
- (iv) the Developer shall not commence building works on the Land until the Council or its successor in title has given agreement to their commencement
- (v) the Developer does not enter into the JCT Building Contract in reliance up on information supplied by the Council or its successor in title or those acting on their behalf

3. The Council for itself and its successors in title hereby covenants with the Developer as follows:-

- (a) The Council will deal with the stopping up of the public highways on the land edged brown on the attached plan including the grant of any necessary wayleaves to the Statutory Authorities in connection with the abandonment
- (b) The Council will use its best endeavours to ensure the stopping up referred to in paragraph (a) above is achieved within 18 months of the grant of planning permission relating to the development of the Land and Blue Land
- (c) The Council will negotiate appropriate wayleave arrangements with the Statutory Authorities to provide acceptable service routes before building work commences including without limitation wayleave agreements for the extant services under the public highway to be abandoned
- (d) The Council hereby grants to the Developer full and free licence to have access to all land necessary to enable the Developer to carry out the Works subject to such reasonable traffic requirements as the Council may notify to the Developer from time to time
- (e) Upon the grant of planning permission the Council will also grant consents as appropriate under the Management Scheme and in relation to such covenants as may affect the Land or the Blue Land
4. The Council and Developer hereby agree that the boundary between part of the Blue Land and Area 3 of the Land may be varied to secure the provision of the minimum 20% one bedroomed dwellings referred to in Clause 2(a) If this occurs there will be a pro rata repayment of the price paid by the Developer if the area of the Blue Land is thereby reduced or an appropriate payment by the Developer to the Council if the area of the Blue Land is thereby increased in respect of their purchase of the Blue Land at the rate of Five Hundred and Fifty Thousand Pounds (£550,000) per acre. The parties effecting an appropriate legal transfer of the land as soon as possible

5. The parties hereto agree that the covenants herein are entered into pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 111 of the Local Government Act 1972 and all other enabling powers and without prejudice to the generality of the foregoing all the covenants hereinbefore contained on the part of the Developer and Council and their successors to carry out work or to do any other thing on or in relation to the Works or the Land and the Blue Land to which such covenants relate are covenants to which Section 33 applies
  
6. This Agreement shall be registered as a Local land Charge
  
7. The Council hereby agrees that to the extent that the Developer shall cease to have any interest in the Blue Land then the Developer shall cease to be liable for the obligations herein contained PROVIDED THAT the Developer shall procure that its successors in title shall assume the obligations herein contained

IN WITNESS WHEREOF the parties hereto have caused their respective Common Seals to be hereunto affixed to this deed the day and year about written

The COMMON SEAL of WELWYN )  
 HATFIELD DISTRICT COUNCIL )  
 was hereunto affixed in the )  
 presence of:-

  
 Chairman

  
 Authorised Officer

The COMMON SEAL of )  
 ADMIRAL HOMES LIMITED )  
 was hereunto affixed )  
 in the presence of:-