

DATED 27th September 2017

DEMOGUIDE LIMITED

and

ALPHA BANK LONDON LIMITED

and

GLOUCESTERSHIRE COUNTY COUNCIL

A G R E E M E N T pursuant to
Section 106 of the Town and Country Planning Act 1990 Chapter III of the Education
Act 1996 the Public Libraries and Museums Act 1964 Section 111 of the Local
Government Act 1972 and Section 1 of the Localism Act 2011

in respect of Land at the former Premier Products Limited site, Bouncers Lane,
Prestbury, Cheltenham, Gloucestershire



Head of Legal Services
Gloucestershire County Council,
Shire Hall,
Westgate Street
Gloucester
GL1 2TG

64249 / 17_00929_OUT

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THIS AGREEMENT is made the *Twenty-seventh* day of *September* 2017

BETWEEN

1. **DEMOGUIDE LIMITED** (Co. Regn. No. 05627902) whose registered address is at 68 Grafton Way, London W1T 5DS and whose address for service is at 133 Hammersmith Road, London W14 0QL ("the Developer ")

2. **ALPHA BANK LONDON LIMITED** (Co. Regn. No. *00185070*) whose registered address is at 66 Cannon Street, London EC4N 6EP ("the Chargee")

3. **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall in the City of Gloucester GL1 2TG ("the Council")

Bawling & Co
[Signature]
[Signature]
[Signature]
[Signature]

WHEREAS:

- (1) The Developer is the Registered Proprietor of the Land with freehold Title Absolute under Title Numbers GR327121, GR408913 and GR132008 at H.M. Land Registry subject only to the entries therein but otherwise free from incumbrances
- (2) The Developer proposes to carry out the Development on the Land
- (3) The Council is
 - (a) a Local Planning Authority as defined in the Act and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act and
 - (b) the Children and Families Authority and the Libraries Authority for Gloucestershire and is of the opinion that the Contributions are necessary to address the consequences of the Development
 - (c) satisfied that entry into this Agreement is of benefit to the public

(4) The Chargee has agreed to enter into this Agreement in order to provide its consent to it in the manner set out below

NOW THIS DEED WITNESSETH as follows:

DEFINITIONS AND INTERPRETATION

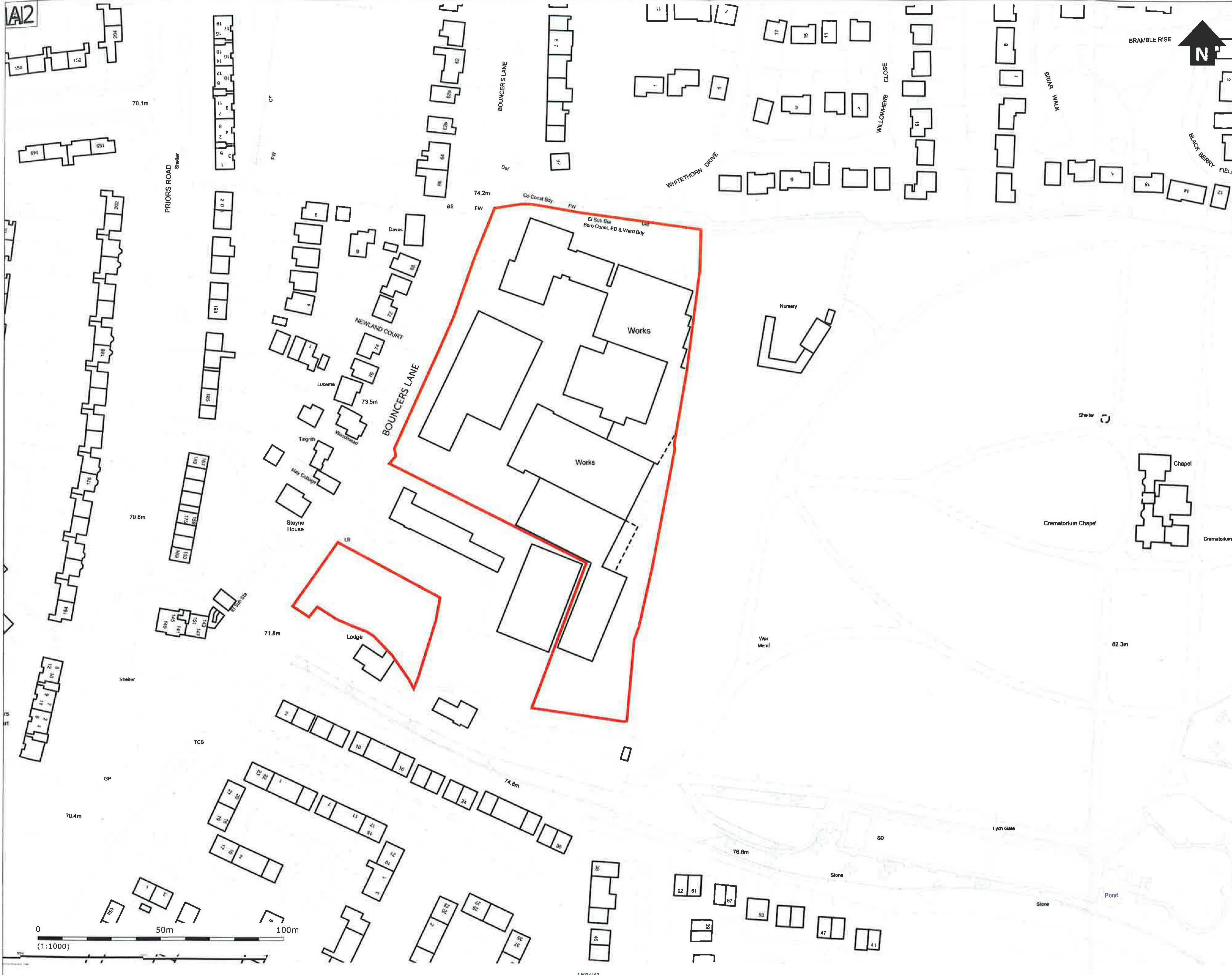
1.1 It is hereby agreed by the parties that in this Agreement the following expressions shall have the following meanings:

'the Act'	means the Town and Country Planning Act 1990 and any amendment thereof
'the Application'	means an application made to Cheltenham Borough Council and registered under number 17/00929/OUT for up to fifty eight (58) residential dwelling including access with all other matters reserved for future consideration
'the Charges'	means two legal charges and one debenture all dated 11 th January 2017 and all made between the Developer (1) and the Chargee (2)
'Commencement Date'	<p>means the date which any material operation as defined in Section 56 of the Act, comprised in the Development shall commence to be carried out other than:</p> <ul style="list-style-type: none"> • Operations consisting of site clearance; • Demolition work, • Archaeological investigations; • Investigations for the purpose of assessing ground conditions; • Diversion and laying of services; • Remedial work in respect of any contamination or other adverse ground conditions; • Erection of any temporary means of enclosure; • The temporary display of site notices or advertisements <p>And "Commence" "Commenced" and "Commence of Development" shall be construed accordingly</p>

'the Contributions'	means the: <ul style="list-style-type: none"> • Pre-school Contribution; • Primary Education Contribution; • Secondary Education Contribution; and • Libraries Contribution
'the Development'	means development of the Land in accordance with (or largely in accordance with) the Permission
'Dwelling'	means a house or flat built as part of the Development (reference to a numbered dwelling such as 40 th shall have the ordinary meaning thereof and shall be construed accordingly)
'Dwelling (Qualified)'	means a house or flat without age or health occupancy restrictions and with two or more bedrooms
'the Education Contributions'	means the: <ul style="list-style-type: none"> • Pre-school Contribution; • Primary Education Contribution; and • Secondary Education Contribution
'First Occupied'	means the date when a Dwelling becomes liable for Council Tax or any replacement thereof and 'First Occupation' shall be construed accordingly
'the Index'	means the cost multiplier issued by the Department for Education (DfE) or by any other Department Ministry or other body upon which the duties in connection with that index devolves being the cost per pupil for the construction of accommodation to provide additional pupil places and supplemented by the Building Cost Information Service Public Sector Tender Price Index issued by the Royal Institution of Chartered Surveyors in the years when the DfE Multiplier is not published
'Indexation'	means application of the relevant index or RPI to the respective contribution in relation to Clause 5
'the Land'	means the land situate at the former Premier Products Ltd site, Bouncers Lane, Prestbury, Cheltenham, Gloucestershire and shown for the purposes of identification only edged red on the Plan
'Late Payment Interest'	means a rate calculated on a daily basis and compounded quarterly from the due date until payment at five per cent (5%) per annum over HSBC Bank plc base rate from time to time in force
'the Libraries Contribution'	means the sum of Eleven Thousand Three Hundred and Sixty Eighty Pounds (£11,368.00) to be used towards local library provision at Prestbury in accordance with the provisions of this Agreement

'Notice of Commencement'	means written notification from the Developer to the Proper Officer of the Commencement Date in accordance with the provisions of the Agreement
'the Permission'	means planning consent granted pursuant to the Application
'the Plan'	means the plan annexed hereto
'the Pre-School Contribution'	means the sum of Fifty Seven Thousand and Ninety Eight Pounds (£57,098.00) to be used towards the pre-school provision to allow for the additional places to be provided at local nurseries and pre-school
'the Primary Education Contribution'	means the sum of Two Hundred and Ten Thousand and Eighty Eight Pounds (£210,088.00) to be used towards Presbury St. Mary's Infants School and Prestbury St. Mary's Junior Primary School in accordance with the provisions of this Agreement
'the Proper Officer'	means the Commissioning Director: Children and Families or such other Chief Officer as shall from time to time be responsible for the Children and Families function of the Council
'the RPI'	means the Retail Prices Index issued by the Office for National Statistics or by any other Department Ministry or other body upon which the duties in connection with that index devolves
'Repayment Interest'	means interest repaid at the London Interbank seven day rate (as compiled by the British Bankers Association) then subsisting calculated annually at the end of each financial year to ascertain the simple average interest rate for that year and then compounded annually calculated from the date of payment until repayment (net of tax if such deduction is required by the guidance in respect thereof issued by Her Majesty's Government at the date of such refund)
'the S106 Monitoring Officer'	means that officer of the Council appointed from time to time with the role of monitoring the compliance of the Developer or other persons with the provisions of this Agreement
'the Secondary Education Contribution'	means the sum of One Hundred and Forty Eight Thousand Seven Hundred and Sixty Nine Pounds (£148,769) to be used towards the provision of a new secondary school within the catchment area of the Development or expansion of existing schools within the catchment area of the Development in accordance with the provisions of this Agreement

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NOTES
 Permission is granted to scale from this drawing for the purpose of Local Authority Planning Approval only. In all other circumstances DO NOT scale from this drawing, please contact this office for any additional information required.
 Contractors, Sub Contractors and Suppliers are to check all relevant dimensions and levels of the site and building before commencing any shop drawings or building work. Any discrepancies should be recorded to the Architect.
 Where applicable this drawing is to be read in conjunction with the Consultants' drawings.
 This drawing is the copyright of Thrive Architects Ltd (s). All rights reserved.
 Ordnance Survey Data © Crown Copyright. All rights reserved. Licence No. 100007359

REV	DESCRIPTION	DATE	AUTHOR	CHK'D

KEY
 Site Boundary



Romsey Office
 Building 300, The Grange, Romsey Road, Michelmersh, SO51 0AE
 t: 01794 367703 f: 01794 367276 www.thrivearchitects.co.uk

PROJECT
 Bouncers Lane
 Cheltenham
 For: Ashville Group

DRAWING
 Site Location Plan - 01

SCALE	DATE	AUTHOR	CHK'D
1:1000 @ A2	19/12/16	VL/hm	VL
JOB NO.	DRAWING NO.	REV	
ASHV151213	SLP-01	-	

'VAT'

means the tax referred to in the Value Added Tax Act 1994 or any tax of a similar nature which is introduced in substitution for or as an addition to such tax from time to time

1.2 The Development shall be deemed to be commenced on the Commencement Date

1.3 Where the context so admits

1.3.1 words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa (and where there is more than one covenantor all obligations of such covenantors shall be joint and several)

1.3.2 where reference is made to a statutory provision this includes all prior and subsequent enactments amendments and modifications relating to that provision and any sub-ordinate legislation made under it

1.4 The expressions "the Council" "the Developer" and "the Chargee" shall include their respective successors in title and assigns and in the case of the Council the successors of its statutory functions and any reference to an officer of the Council shall include such officer for the time being or anyone authorised by him to act on his behalf or in that capacity

1.5 All headings in this Agreement are for ease of reference only and are not part of the Agreement nor are they intended to be used as a guide to its interpretation

- 1.6 All payments in accordance with the terms of this Agreement shall be exclusive of any VAT payable in respect thereof
- 1.7 the obligations hereunder shall not be enforceable against:
- 1.7.1 the owners and/or occupiers of an individual Dwelling or those deriving title from them; and
- 1.7.2 any statutory undertaker or other person who acquires any part of the Land or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services
- 1.8 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms
- 1.9 this Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Permission shall be quashed revoked or otherwise withdrawn or it expires prior to the implementation of the Permission
- 1.10 no party shall be liable for any breach of covenant, restriction or obligation contained in this Agreement after it shall have parted with its interest in the Land but without prejudice to liability for any subsisting breach arising prior to the parting with such interest for which it shall continue to be liable

STATUTORY PROVISIONS

2. The Developer and the Council hereby agree that
 - 2.1 the obligations on the part of the Developer hereinafter contained are planning obligations imposed pursuant to the provisions of Section 106 of the Act which are enforceable by the Council and binding on successors in title to the Land; and
 - 2.2 inter alia this is an Agreement pursuant to Chapter III of the Education Act 1996 and the Public Libraries and Museums Act 1964 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011

THE CONTRIBUTIONS

3. The Developer hereby agrees and covenants with the Council that it will pay to the Council (plus Indexation in accordance with Clause 5 of this Agreement and Late Payment Interest in accordance with Clause 6 of this Agreement if applicable):

Type of Contribution	Instalments	Trigger
3.1 Pre-school Contribution	Two (2) instalments	1st = 66% of the base line total on or prior to First Occupation of the twentieth (20 th) Dwelling ; and 2nd = 34% of the base line total on or before First Occupation of the fortieth (40 th) Dwelling
3.2 Primary Education Contribution	Two (2) instalments	1st = 66% of the base line total on or prior to First Occupation of the twentieth (20 th) Dwelling; and 2nd = 34% of the base line total on or

		before First Occupation of the fortieth (40 th) Dwelling
3.3 Secondary Education Contribution	Two (2) instalments	1 st = 66% of the base line total on or prior to First Occupation of the twentieth (20 th) Dwelling; 2 nd = 34% of the base line total on or before First Occupation of the fortieth (40 th) Dwelling
3.4 Libraries Contribution	Two (23) instalments	1 st = 66% of the base line total on or prior to First Occupation of the twentieth (20 th) Dwelling; and 2 nd = 34% of the base line total on or before First Occupation of the fortieth (40 th) Dwelling

APPLICATION REVIEW AND REPAYMENT OF THE CONTRIBUTIONS

4. The Council hereby agrees and covenants with the Developer that the:

4.1 **Pre-School Contribution** (together with any Indexation payment in accordance with Clause 5 of this Agreement and any Late Payment Interest payable in accordance with Clause 6 of this Agreement) shall be used towards:-

Application	Repayment Trigger
Pre-school provision to allow for the additional places to be provided at local nurseries and pre-schools including 'Bright Horizons' and 'Circus Day Nursery'	Subject to Clause 4.5 below 5 years from the date of payment of the last instalment

4.2 Primary Education Contribution (together with any Indexation payment in accordance with Clause 5 of this Agreement and any Late Payment Interest payable in accordance with Clause 6 of this Agreement) shall be used towards:-

Application	Repayment Trigger
<p>Prestbury St. Mary's Infants School and St Mary's Junior School for capital works to:</p> <ul style="list-style-type: none"> • extend; • remodel; • upgrade; and • improve <p>capacity and suitability of the schools to allow for the additional places generated by the Development to be provided</p>	<p>Subject to Clause 4.5 below 5 years from the date of payment of the last instalment</p>

4.3 Secondary Education Contribution (together with any Indexation payment in accordance with Clause 5 of this Agreement and any Late Payment Interest payable in accordance with Clause 6 of this Agreement) shall be used towards:-

Application	Repayment Trigger
<p>Either:</p> <ul style="list-style-type: none"> • the provision of a new purpose built secondary school within the catchment area of the Development; or • the expansion of existing schools within the catchment area of the Development for capital works to upgrade and improve 	<p>Subject to Clause 4.5 below 5 years from the date of payment of the last instalment</p>

capacity and suitability of those schools to allow for the additional places generated by the Development to be provided	
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4.4 **Libraries Contribution** (together with any Indexation payment in accordance with Clause 5 of this Agreement and any Late Payment Interest payable in accordance with Clause 6 of this Agreement) shall be used towards:-

Application	Repayment Trigger
Any of the following: <ul style="list-style-type: none"> • new digital access, • furniture; or • fittings 	Subject to Clause 4.5 below 5 years from the date of payment of the last instalment

4.5 immediately prior to the payments in accordance with Clauses 4.1 to 4.3 above a review shall be carried out and in the event that the final number of:

EA
4.4
4.3
CF

4.5.1 Dwellings(Qualified) built pursuant to the Permission varies from the currently proposed Fifty Eighty (58) Dwellings (Qualified) the Education Contributions shall be reviewed at the following rates:

4.5.1.1 One Thousand One Hundred and Two Pounds (£1,102.00) per house and Three Hundred and One Pounds (£301.00) per flat in relation to the Pre-school Contribution; and

4.5.1.2 Three Thousand Six Hundred and Twenty Two Pounds (£3,622.00) per house and Three Hundred and Sixty Seven

Pounds (£367.00) per flat in relation to the Primary Education Contribution; and

4.5.1.3 Three Thousand Five Hundred and Eleven Pounds (£3,511.00) per house and Ninety Four Pounds (£94.00) per flat in relation to the Secondary Education Contribution

4.5.2 Dwellings built pursuant to the Permission varies from the currently proposed Fifty Eighty (58) Dwellings the Libraries Contribution shall be reviewed at a rate of One Hundred and Ninety Six Pounds (£196.00) per Dwelling

with any amount underpaid being paid to the Council or if overpaid being reimbursed by the Council (as applicable) within twenty eight (28) days of completion of the review

4.6 in the event that all or part of the Contributions are unspent or uncommitted five (5) years from the date of its respective final payment trigger date or actual date of its payment (whichever is the later) the Council shall return to the party by whom the payment to the Council was made any such unexpended or uncommitted sum together with Repayment Interest on the amount repaid

INDEXATION

5. There shall be added to the payment pursuant to Clause 3 and Clause 4.5 a sum calculated by reference to any percentage increase in the corresponding index set out between the publications immediately before the date of this Agreement (save for the Education Contributions which will be between the base year of 2017/18) and the date upon which the payments are actually paid to the Council as follows:

- 5.1 the Index in relation to the Education Contributions; and
- 5.2 the RPI in relation to the Library Contribution

LATE PAYMENT INTEREST

6. If any sum payable under the terms of this agreement is not paid at the time specified herein the Developer shall pay to the Council Late Payment Interest on such sum

COSTS

7. The Developer hereby agrees with the Council that it will upon the execution of this Agreement pay the Council's:

- 7.1 legal charges in the sum of Two Thousand One Hundred and Ninety Pounds and Sixty Pence (£2,190.60); and
- 7.2 technical charges in the sum of Two Hundred and Fifty Pound (£250.00); and
- 7.3 charges for monitoring the compliance with this Agreement in the sum of Four Thousand Pounds (£4,000.00)

NOTICES

8. Any notice to:
- 8.1 the Developer under this Agreement shall be in writing signed by the Head of Legal Services for the time being of the Council unless otherwise herein provided and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post at its registered office; and
- 8.2 the Council under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Head of Legal Services Gloucestershire County Council Shire Hall Westgate Street Gloucester GL1 1TG

NOTICE OF COMMENCEMENT

9. The Developer hereby agrees and covenants with the Council that:
- 9.1 it will write to the S106 Monitoring Officer no less than twenty eight (28) days before the Developer expects commencement of the Development to occur notifying the Council of the expected Commencement Date;
- 9.2 within seven (7) days of the actual Commencement Date the Developer will serve on the S106 Monitoring Officer the Notice of Commencement
- 9.3 the Proper Officer is at liberty to elect a date which it considers to be the Commencement Date in default of the Developer's compliance with sub-clause 9.1 and 9.2 above for the purposes of Clauses 5 (Indexation) and 6 (Late Payment Interest)

NON-WAIVER

10. It is hereby agreed by the parties hereto that failure by the Council or the Proper Officer at any time to enforce the provisions of this Agreement or to require performance strictly or otherwise by the Developer of any of the conditions covenants agreements or obligations of this Agreement or any failure or delay by the Council or the Proper Officer to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision and any variation of this Agreement agreed between the Developer and the Council shall not vitiate the remainder of the Agreement which shall remain in full force and effect subject to such amendments or amendments agreed

GENERAL

11. The parties hereby agree that

11.1 this Agreement constitutes the entire agreement between the parties in respect of the Permission and

11.2 this Agreement supersedes and replaces all previous negotiations whether oral or written and

11.3 none of the parties has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another and no collateral agreement exists between the parties and

11.4 nothing herein contained excludes the liability of any of the parties in relation to fraud

CONSENT TO REGISTRATION

12. The Developer hereby consents to the registration of this Deed as a Local Land Charge

CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

13. It is not intended that any third party shall have a right to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit and nor shall any such third party have a right of veto over any future variations of this Agreement

EFFECT OF INVALIDITY ILLEGALITY OR ENFORCEABILITY

14. If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

WARRANTY AND CONSENT OF THE CHARGE

15.1 The Developer hereby warrants to the County Council that they have not leased mortgaged charged or otherwise created any interest in the Land at the date of this Agreement other than has already been identified in this Deed

15.2 The Chargee hereby concurs with the giving by the Developer of the obligations in relation to its interests in the Land contained in this Agreement to the intent that it and the security created by the Charges that relate to the Land (including any floating charges which are automatically crystallised

pursuant to the terms of that charge) shall be subject in all respects to the terms conditions and obligations of this Agreement (but only with the intention that the covenants will be binding on the Chargee as a chargee in possession or a successor in title to the Developer and so that the Chargee is not to be personally liable for any breach of the covenants after it has parted with all interest in the Land or in any part of it in respect of which a breach occurs)

JURISDICTION

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

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

Executed as a **DEED** by affixing
the **COMMON SEAL** of
DEMOGUIDE LIMITED
in the presence of:-

*Executed as a deed by Demoguide Limited
acting by two directors*

Director

~~Secretary~~ Director

SIGNED SEALED and DELIVERED by

as Attorney for and on behalf of
ALPHA BANK LONDON LIMITED
in the presence of:-

[Redacted signature]

ALPHA BANK LONDON LIMITED
CAPITAL HOUSE, 85 KING WILLIAM STREET
LONDON EC4N 7BL



THE COMMON SEAL of
GLOUCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of:-

[Redacted signature]

for Head of Legal Services



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