

DATED

6th April

2016

THE GOVERNING BODY OF PITTVILLE SCHOOL

and

GLOUCESTERSHIRE COUNTY COUNCIL

AGREEMENT 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 Pittville School, Albert Road, Cheltenham,
Gloucestershire



Head of Legal Services
Gloucestershire County Council,
Shire Hall,
Westgate Street
Gloucester
GL1 2TG
61134 / 15_01163_OUT

This page has been left intentionally blank

TABLE OF CONTENT

| CLAUSE NO. | DESCRIPTION | PAGE NO. |
|------------|---|----------|
| 1 | DEFINITIONS AND INTERPRETATION | 6 |
| 2 | STATUTORY PROVISIONS AND CONDITIONS PRECEDENT | 11 |
| 3 | THE CONTRIBUTIONS | 11 |
| 4 | APPLICATION REVIEW AND REPAYMENT OF THE CONTRIBUTIONS | 12 |
| 5 | INDEXATION | 14 |
| 6 | COSTS | 15 |
| 7 | NOTICES | 15 |
| 8 | NOTICE OF COMMENCEMENT | 16 |
| 9 | NON-WAIVER | 16 |
| 10 | GENERAL | 17 |
| 11 & 12 | CONSENT TO REGISTRATION AND SDLT AND CANCELLATION THEREOF | 18 |
| 13 | LATE PAYMENT INTEREST | 18 |
| 14 | CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999 | 19 |
| 15 | EFFECT OF INVALIDITY ILLEGALITY OR ENFORCEABILITY | 19 |
| 16 | WARRANTY | 19 |
| 17 | JURISDICTION | 19 |
| 18 | FIXED BOND (PRIOR TO COMMENCEMENT) | 20 |
| | | |
| | THE SCHEDULE (FORM OF BOND) | 21 |

This page has been left intentionally blank

THIS AGREEMENT is made the *Sixth* day of *April* 2016

BETWEEN

1. **THE GOVERNING BODY OF PITTVILLE SCHOOL** of Albert Road, Cheltenham, Gloucestershire GL52 3JD ("the **Owner**")
2. **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall in the City of Gloucester GL1 2TG ("the **Council**")

WHEREAS:

- (1) The Owner is the Registered Proprietor of the Land with freehold Title Absolute under Title Numbers GR 172359 and GR400559 at H.M. Land Registry subject only to the entries contained therein
- (2) The Owner has submitted the Application to Cheltenham Borough Council who having regard to the provisions of the development plan and all other material considerations have resolved to grant the Permission for the Development subject to the Owner entering into this Agreement
- (3) The Owner is entering into a separate Agreement with Cheltenham Borough Council in relation to other provision pursuant to the Application which is intended to be completed either contemporaneously with or prior to completion of this Agreement
- (4) 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; and
- (c) satisfied that entry into this Agreement is of benefit to the public

NOW THIS DEED WITNESSETH as follows:

DEFINITIONS AND INTERPRETATION

1.(a) It is hereby agreed by the parties that in this Agreement the following expressions shall have the following meanings:

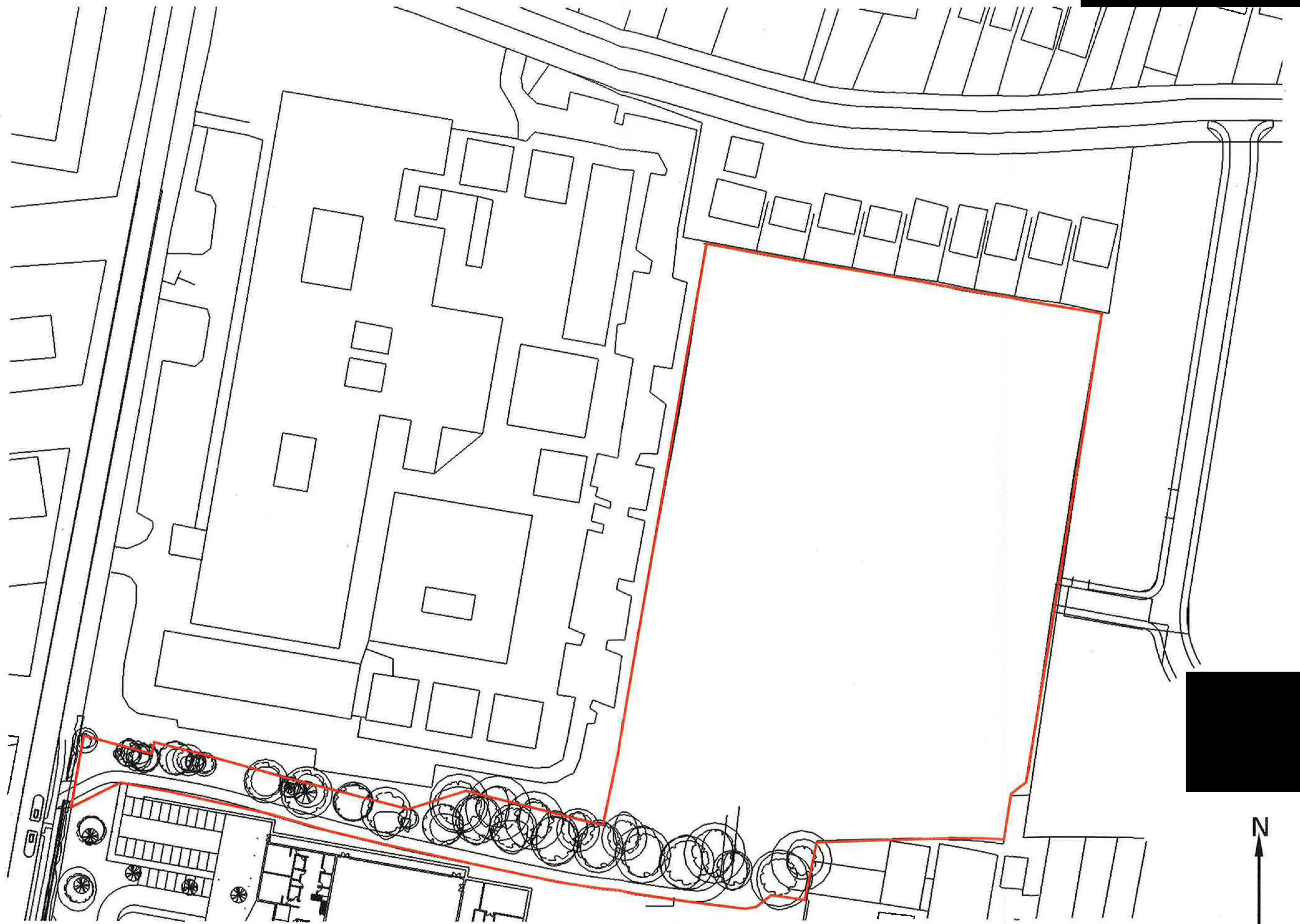
| | |
|----------------------------|--|
| 'the Act' | means the Town and Country Planning Act 1990 and any amendment thereof |
| 'the Application' | means an application made to Cheltenham Borough Council dated 21 st July 2015 and registered under number 15/01163/OUT together with all plans specifications and particulars deposited with the Cheltenham Borough Council and forming part of the Application for the erection of up to fifty eight (58) dwellings and associated works on the Land |
| 'the Bond' | means a bond in the form set out in the Schedule hereto and marked ' Bond ' or such other form approved in writing by the Council |
| 'the Bondsman' | means a company or person that achieves a Financial Strength Indicator of 5A together with a Risk Indicator of 1 and a minimum risk of failure when a check is carried out with Dun and Bradstreet or alternatively has been approved by the Head of Legal Services (acting reasonably) |
| 'the Bond Sum' | means the sum of One Hundred and Twenty Eight Thousand Seven Hundred and Seventy Eight Pounds (£128,778.00) |
| 'Commencement Date' | 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 with the exemption of: <ul style="list-style-type: none"> • Works involved in site clearance, • Demolition, |

| | |
|---------------------------------|---|
| | <ul style="list-style-type: none"> • Decontamination, • Site investigations, • Surveys, • Archaeological investigations; • Erection of fences and hoardings; • Layout of services and temporary access; • Removal of hedgerow; <p>All of which should be disregarded and references in this Agreement to “Commence” “Commenced” and “Commencement of Development” shall have the same meaning as aforesaid</p> |
| 'the Development' | means development of the Land in accordance with (or largely in accordance with) the Permission |
| 'Dwelling' | means a dwelling built as part of the Development |
| 'Dwelling (Qualified)' | means a house without age or health occupancy restrictions and with two or more bedrooms |
| '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 Contributions' | means the Primary Education Contribution the Secondary Education Contribution and the Libraries Contribution |
| 'Head of Legal Services' | means either the Acting Head or the Head of Legal Services (as the case may be) for the time being of the Council or such other Chief officer as shall from time to time be responsible for the Council's Legal function |
| '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 DoE 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 Pittville School, Albert Road, Cheltenham, Gloucestershire and shown for the purposes of identification only edged red on the Plan |
| 'Notice of Commencement' | means written notification from the Owner to the Proper Officer of the Commencement Date in accordance with the provisions of the agreement |

| | |
|---|--|
| '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 Eight Pounds (£11,368.00) to be used towards improving local library provision in Prestbury, near Cheltenham, Gloucestershire as set out in Clause 4 of this Agreement |
| 'the Permission' | means planning consent granted pursuant to the Application |
| 'the Primary Education Contribution' | means the sum of One Hundred and Seventeen Thousand Four Hundred and Ten Pounds (£117,410.00) to be used towards the expansion of the existing primary school at Dunalley Primary School as set out in Clause 4 of this Agreement |
| 'the Plan' | means the plan annexed hereto |
| '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 |
| 'Registered Provider' | means a provider of social housing as defined by Part 2 of the Housing and Regeneration Act 2008 or other entity providing affordable housing under equivalent arrangements who is approved or accredited by the Homes and Communities Agency or similar successor body |
| '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 Owner or other persons with the provisions of this Agreement |

| | |
|--|--|
| 'the Secondary Education Contribution' | means the sum of One Hundred and Sixty Three Thousand Nine Hundred and Seventy Eight Pounds (£163,978.00) to be used towards Pittville School as set out in Clause 4 of this Agreement |
| '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 |

- (b) The Development shall be deemed to be commenced on the Commencement Date
- (c) Where the context so admits
 - (i) 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)
 - (ii) 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
- (d) The expressions "the **Council**" and "the **Owner**" 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 any 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
- (e) 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



Pittville School - Residential Site Location Plan - Scale 1:1000 on A3

- (f) All payments in accordance with the terms of this Agreement shall be exclusive of any VAT payable in respect thereof
- (g) the obligations hereunder shall not be enforceable against:
 - (i) the owners and/or occupiers of an individual Dwelling or those deriving title from them;
 - (ii) any Registered Provider or those deriving title from them; and
 - (iii) 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
- (h) any provision in this Agreement that the Secretary of State determines does not meet the statutory tests set out in Sections 122 and 123 of the Community Infrastructure Regulations 2011 (as amended) and paragraphs 203-206 of the National Planning Policy Framework shall from the date of such determination not be enforced
- (i) 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
- (j) Every reference to any statute or any section of any statute shall be read and construed as including a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme or other such matter made in pursuance of such statute

- (k) Any covenant by the Owner not to do any act or thing includes a covenant not to permit nor to allow the doing of that act or thing by any person authorised by them to be on the Land or to act under this Agreement

STATUTORY PROVISIONS AND CONDITIONS PRECEDENT

2. The Owner and the Council hereby agree that
- (a) the obligations on the part of the Owner 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;
- (b) inter alia this is an Agreement pursuant to 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 and all other enabling powers; and
- (c) the obligations contained in clauses 3, 4 5, 8 and 13 on the part of the Owner are conditional upon the grant of the Permission by Cheltenham Borough Council

THE CONTRIBUTIONS

3. The Owner hereby agrees and covenants with the Council that it will pay to the Council (plus Indexation and Late Payment Interest if applicable):

| Type of Contribution | Instalments | Trigger |
|------------------------------------|-------------|---|
| (a) Primary Education Contribution | None | On or before the First Occupation of the First (1 st) |

| | | |
|--------------------------------------|------|---|
| | | Dwelling built as part of the Development |
| (b) Secondary Education Contribution | None | On or before the First Occupation of the First (1 st) Dwelling built as part of the Development |
| (c) Libraries Contribution | None | On or before the First Occupation of the First (1 st) Dwelling built as part of the Development |

Application Review and Repayment of the Contributions

4. The Council hereby agrees and covenants with the Owner that the:
- (a) **Primary Education Contribution** (together with any Indexation payment in accordance with Clause 5 hereof and any Late Payment Interest payable in accordance with Clause 13 hereof) shall be used towards:-

| Application | Repayment Trigger |
|--|---|
| Dunally Primary School for capital works to extend, remodel, upgrade and improve its capacity and suitability to allow for an additional 9.5 places to be provided | Subject to sub-clause (d) below five (5) years from the Commencement Date or the date of payment (whichever is the later) |

- (b) **Secondary Education Contribution** (together with any Indexation payment in accordance with Clause 5 hereof and any Late Payment Interest payable in accordance with Clause 13 hereof) shall be used towards:-

| Application | Repayment Trigger |
|-------------|-------------------|
| | |

| | |
|--|---|
| Pittville School for capital works to extend, remodel, upgrade and improve its capacity and suitability to allow for an additional 8.7 places to be provided | Subject to sub-clause (d) below five (5) years from the Commencement Date or the date of payment (whichever is the later) |
|--|---|

(c) **Libraries Contribution** (together with any Indexation payment in accordance with Clause 5 hereof and any Late Payment Interest payable in accordance with Clause 13 hereof) shall be used towards:-

| Application | Repayment Trigger |
|---|---|
| <p>Improving the local library provision in Prestbury and shall be applied to any of the following:</p> <ul style="list-style-type: none"> • Capital works, • Extending opening hours, • Increasing stock, • Computer resources, • New furniture | Subject to sub-clause (d) below five (5) years from the Commencement Date or the date of payment (whichever is the later) |

(d) immediately prior to the payments in accordance with sub-clauses (a) to (c) above a review shall be carried out and in the event that the final number of:

(i) Dwellings(Qualified) built pursuant to the Permission varies from the currently proposed Fifty Eighty (58) Dwellings (Qualified) the Education Contributions shall be reviewed at a rate of:

(aa) Three Thousand and Ninety Pounds (£3,090.00); and

(bb) Two Thousand Eight Hundred and Twenty Seven Pounds
(£2,827.00)

per Dwelling (Qualified)

- (ii) 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 in respect of either (i) or (ii) above 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

- (e) in the event that all or part of the Contributions are unspent or uncommitted five (5) years from the date of its respective repayment trigger the Council shall return to the party by whom the payment to the Council was made (or as they shall direct)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 a sum calculated by reference to any percentage increase in:

- (a) the Index with a base year of 2015/16 and the date upon which the payments are actually paid to the Council in terms of the Education Contributions; and
- (b) the RPI between the publication immediately before the date hereof and the date upon which the payments are actually paid to the Council in terms of the Libraries Contribution

COSTS

6. The Owner hereby agrees with the Council that it will upon the execution hereof pay the Council's:

- (a) legal charges in the sum of *Two Thousand Five Hundred and Fifty Three Pounds and Forty Pence* — (£ 2,553.40); and
- (b) technical charges in the sum of *Three Hundred and Ninety — Pounds* ————— (£ 390.00)

NOTICES

7. Any notice to:

- (a) the Owner 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 the address stated at the beginning of this Agreement; and
- (b) 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

8. The Owners hereby agrees and covenants with the Council that :
- (a) it will write to the S106 Monitoring Officer no less than twenty eight (28) days before the Owners expects Commencement of the Development to occur notifying the Council of the expected Commencement Date;
 - (b) within seven (7) days of the actual Commencement Date the Owners will serve on the S106 Monitoring Officer the Notice of Commencement
 - (c) the Proper Officer is at liberty to elect a date which it considers to be the Commencement Date in default of the Owners' compliance with sub-clause 8(a) and 8(b) above for the purposes of Clauses 5 (Indexation) and 13 (Late Payment Interest)

NON-WAIVER

9. 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 Owner 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 Owner 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

10. The parties hereby agree that
 - (a) this Agreement constitutes the entire agreement between the parties in respect of the Permission and
 - (b) this Agreement supersedes and replaces all previous negotiations whether oral or written and
 - (c) 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
 - (d) nothing herein contained excludes the liability of any of the parties in relation to fraud
 - (e) no person shall be liable for a breach of a covenant contained in this Deed after parting with all its interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
 - (f) 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 Permission granted (whether or not on appeal) after the date of this Agreement

CONSENT TO REGISTRATION AND SDLT AND CANCELLATION THEREOF

11.(a) The Owner hereby consents to the registration of this Deed as a Local Land Charge, as a Notice on Title Number GR172359 and GR400559; and

(b) the Council shall:

- (i) effect the cancellation of the Notice; and
- (ii) use its reasonable endeavours to remove the entry on the Local Land Charge register held by Cheltenham Borough Council

if requested by the Owner to do so PROVIDED THAT the:

- (aa) Owner has fully complied with the obligations contained in this Deed;
or
- (bb) the Permission is quashed revoked or otherwise withdrawn or expires within the meanings of Sections 91 to 93 inclusive of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act with or without the consent of the Owner

12. Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required and thus the Council hereby certifies that a Land Transaction Return is not applicable in accordance with Section 79(3) of the Finance Act 2003

LATE PAYMENT INTEREST

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

CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

14. 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

15. 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

16. The Owner 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

JURISDICTION

17. 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

FIXED BOND (PRIOR TO COMMENCEMENT)

18. The Owner hereby covenants and agrees with the County Council that the

Owner shall:

- (a) not cause or permit the Commencement of Development to occur until they have procured that the Bondsman has entered into the Bond for the Bond Sum; and
- (b) (notwithstanding paragraph sub-clause (a) of this Clause) procure that the Bondsman enters into the Bond for the Bond Sum prior to Commencement of Development

- (a) the total sum payable by the Bondsman shall not exceed the sum of One Hundred and Twenty Eight Thousand Seven Hundred and Seventy Eight Pounds (£128,778.00) ("the Bond Sum")
 - (b) the Council hereby agrees with the Bondsman that upon discharge of each payment (together with any indexation and interest payable) identified in the Main Agreement and confirmation from 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 "Proper Officer") so to do the Council will (as soon as practicable thereafter) notify the Bondsman of such reduction
 - (c) in the event of the sum payable under the terms of this clause 1 of this Deed being reduced in accordance with sub-clause (b) of this clause then for the purposes of this sub-clause from the date of such notification the reduced sum specified shall be substituted for the Bond Sum and the date of notification shall be substituted for the date specified in sub clause (a) of this clause
3. Any demand shall be accepted by the Bondsman as conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council for the purpose of this Agreement
4. If any event shall happen whereby it becomes impossible or impracticable to implement the provisions for calculating the amount payable hereinbefore contained then and in any such case such dispute difference or question as the case may be as to the amount payable shall be referred for determination by a single arbitrator in accordance with the provisions of the Arbitration Act 1996 or any statutory enactment in that behalf for the time being in force
5. Any notice to the Bondsman under this Agreement shall be in writing and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post to its registered office and any notice to 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 Commissioning Director: Communities & Infrastructure Gloucestershire County Council Shire Hall Gloucester

6. 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 Owner of the relevant conditions covenants agreements or obligations of the Main 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 the Main Agreement agreed between the Owner and the Council which does not affect the liability of the Bondsman shall not vitiate the remainder of this Agreement which shall remain in full force and effect subject to such amendments or amendments agreed

7. Defined terms set out in the Main Agreement and used herein shall have the meanings set out in the Main Agreement

8. This agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts

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

THE COMMON SEAL of

was hereunto affixed
in the presence of:-

Director
Secretary

**THE COMMON SEAL of
GLOUCESTERSHIRE COUNTY COUNCIL**

was hereunto affixed
in the presence of:-

(Acting) Head of Legal Services

DATED

201

and

GLOUCESTERSHIRE COUNTY COUNCIL

BOND

in respect of Land at Pittville School, Albert
Road, Cheltenham, Gloucestershire

61134A /15_01163_OUT

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
THE GOVERNING BODY OF
PITTVILLE SCHOOL
in the presence of:-



Authorised Signatory



Authorised Signatory

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



for Head of Legal Services