

DATED

2012

EPPING FOREST DISTRICT COUNCIL

and

SUSAN ESTHER WHALEY

and

NICHOLAS BONE

and

BARCLAYS BANK PLC

and

OAKLAND PRIMECARE LIMITED

**Planning Obligation by Deed of Agreement under Section
106 of the Town and Country Planning Act 1990**

relating to the development Land at Hoe Lane, Nazeing, EN9
2RN

TABLE OF CONTENTS

INTRODUCTION

- 1 DEFINITIONS
- 2 CONSTRUCTION OF THIS DEED
- 3 LEGAL BASIS
- 4 CONDITIONALITY
- 5 THE OWNER'S COVENANTS
- 6 THE COUNCIL'S COVENANTS
- 7 MISCELLANEOUS
- 8 MORTGAGEE'S CONSENT
- 9 WAIVER
- 10 CHANGE IN OWNERSHIP
- 11 INDEXATION
- 12 INTEREST
- 13 VAT
- 14 JURISDICTION
- 15 DELIVERY

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

SECOND SCHEDULE

Form of notice of planning permission

THIRD SCHEDULE

The Owner's Covenants with the Council

FOURTH SCHEDULE

Council's Covenants

DATE

2012

PARTIES

- (1) **EPPING FOREST COUNCIL** of High Street, Epping, Essex CM16 4BZ (“Council”)
- (2) **SUSAN ESTHER WHALEY** of Oakley Hall, Hoe Lane, Nazeing, Waltham Abbey, Essex En9 2RN (“First Owner”)
- (3) **NICHOLAS BONE** of Prospect House, Hoe Lane, Nazeing, Essex EN9 2RG (“Second Owner”)

- (4) **BARCLAYS BANK PLC** of UK Banking Service Centre, PO Box 299, Birmingham B1 3PF (“the Mortgagee”)
- (5) **OAKLAND PRIMECARE LIMITED** (Company number 06727108) whose registered office is at 505 Pinner Road Harrow HA2 6EH (“Developer”)

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The First Owner is the freehold owner of a part of the Site as shown edged red (“the Red Land”) on the plan annexed hereto.
- 3 The Second Owner is the freehold owner of a part of the Site shown edged green (“the Green Land”) on the plan annexed hereto.
- 4 The Developer is proposing to develop a Care Home on a part of the Red Land and a part of the Green Land.
- 5 The Bank of Scotland plc holds a First Charge over the Red Land
- 6 The Mortgagee holds a Charge over the Red Land.
- 7 Oakland Healthcare Limited (Company number 05979087) acting as agent on behalf of Sav Atkar owner of the Developer submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 8 The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

“Act”	the Town and Country Planning Act 1990(as amended)
“Application”	the application for full planning permission dated 13 September 2010 submitted to the Council for the Development and allocated reference number EPF/1907/10
“Care Home”	the care home to constructed on the Site in accordance with the Planning Permission

“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.
“Deed”	this deed
“Development”	the Development of the Site by the Demolition of derelict glasshouse and sundry structures and the erection of a 50 bed care home with associated parking and landscaping as set out in the Application
“Ecological Sum”	the sum of ONE THOUSAND FIVE HUNDRED POUNDS (£1500.00) to be used by the Council for ecological enhancement works within the Nazeing Triangle Local Nature Reserve
“First Occupation”	means the occupation of the Care Home by its first Resident.
“Highway Contribution”	the sum of ONE HUNDRED AND FORTY POUNDS (£140.00)
“Index”	All Items Index of Retail Prices issued by the Office for National Statistics.
“Instalment NHS Payments”	the sum of TWENTY FIVE THOUSAND POUNDS (£25,000.00) to be paid in five equal instalments
“Lump Sum NHS Payment”	the sum of FORTY THOUSAND POUNDS (£40,000.00)
“Nazeing Parish Council Payment”	the sum of TWENTY FIVE THOUSAND POUNDS (£25,000.00) being a contribution towards community projects within the Nazeing Parish Council administrative area
“NHS”	NHS West Essex Primary Care Trust of Spencer Close, 4 St Margaret’s Hospital, The Plain, Epping, Essex CM16 6TN or any successor organisation carrying out similar functions

“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
“Plan”	the plan attached to this Deed
“Planning Permission”	the outline full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
“Site”	together the Red Land and the Green Land against which this Deed may be enforced
“Travel Monitoring Fee”	the sum of THREE THOUSAND POUNDS (£3000.00)

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include 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.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successor to its statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972

3.2 The covenants, restrictions and requirements in this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.1 14 and 15 and legal costs clause jurisdiction and delivery clauses and Paragraph 1 of the Third Schedule and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The First Owner and the Second Owner jointly and severally covenant with the Council as set out in the Third Schedule.

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the First Owner the Second Owner and the Developer as set out in the Fourth Schedule.

7 MISCELLANEOUS

7.1 The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

7.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.4 This Deed shall be registrable as a local land charge by the Council.

7.5 Where the agreement, approval, consent or expression of satisfaction is required by the First Owner or the Second Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed

And any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.7 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 provisions of this Deed.

7.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the First Owner and the Second Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8 MORTGAGEE'S CONSENT

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the First Owner with its consent and that the Red Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Red Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Red Land in which case it too will be bound by the obligations as if it were a person deriving title from the First Owner.

9 WAIVER

No waiver (whether expressed or implied) by the Council or the First Owner or the Second Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the First Owner or the Second Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The First Owner and the Second Owner agree with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

11 INDEXATION

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

12 INTEREST

If any payment due under this Deed is paid late, interest will be payable from the date payment is due to the date of payment at the National Westminster Bank base rate

13 VAT

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

14 JURISDICTION

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

15 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

The First Owner's Title

ALL THAT LAND known as Oakley Hall, Hoe Lane, Nazeing, Waltham Abbey EN8 2RN as the same is registered at the Land Registry under title number EX673127 of which the Red Land forms part.

The Second Owner's Title

ALL THAT LAND known as Prospect House, Hoe Lane, Nazeing, Waltham Abbey EN8 2RG as the same is registered at the Land Registry under title number EX693523 of which the Green Land forms part.

SECOND SCHEDULE

[Form of notice of planning permission annexed hereto]

THIRD SCHEDULE

The First Owner and the Second Owner Covenant with the Council as follows:

1. To serve on the Council:
 - 1.1 not less than 1 month prior to Commencement of Development a notice stating the expected date of Commencement of Development and
 - 1.2 not less than 1 month prior to First Occupation a notice stating the expected date of First Occupation
2. Not to Commence Development until the Lump Sum NHS Payment has been paid to the Council
3. To pay the Lump Sum NHS Payment to the Council on or prior to the date hereof
4. To pay to the Council the Instalment NHS Payments payable by five annual instalments each of FIVE THOUSAND POUNDS (£5,000.00) the first instalment to be paid twelve months after the payment of the Lump Sum NHS Payment and the four subsequent instalments each to be paid on the respective anniversary of the date of the first payment
5. To pay to the Council the Nazeing Parish Council Payment by five annual instalments each of FIVE THOUSAND POUNDS (£5,000) the first instalment being made to the Council within 30 days of First Occupation of the Care Home constructed on the Site and four subsequent instalments each to be paid on the respective anniversary of the date of the first payment
6. To pay to the Council the sum of THREE THOUSAND POUNDS (£3,000) in respect of a Travel Plan Monitoring Fee prior to First Occupation
7. To pay to the Council prior to First Occupation the Highway Contribution for the cost of providing 4 X "SLOW" road markings on the highway known as Hoe Lane EN9

8. In the event that the on site enhancements sought under Condition 6 of the Planning Permission are not provided prior to First Occupation to pay to the Council the Ecological Sum within 28 days of First Occupation
9. That in respect of admissions to the Care Home to give priority to residents who prior to admission lived within the Epping Forest District Council administrative area and residents who prior to admission lived within the Nazeing Parish Council administrative area will be offered a 10% discount for private fees and top up fees during the first five year of operation of the Care Home.

FOURTH SCHEDULE

Council's Covenants

Obligation to make payment to Third Parties

- 1 The Council covenants with the First Owner, the Second Owner and the Developer that on receipt by the Council of the Lump Sum NHS Payment the Instalments NHS Payment the Nazeing Parish Council Payment the Council will deal with such payments as follows:-
 - 1.2 to pay the Lump Sum NHS Payment to the NHS within 30 days of the Commencement of Development
 - 1.3 to pay to the NHS the five annual instalments in the sum of FIVE THOUSAND POUNDS (£5,000) each within 30 days of the receipt of the annual Instalments NHS Payment.
 - 1.4 to pay the Nazeing Parish Council Payment to Nazeing Parish Council within 30 days of receipt of each payment
 - 1.5 in the event that the Planning Permission is quashed revoked or expires prior to Commencement of Development the Council shall pay back the Lump Sum NHS Payment and any instalment of the Instalment NHS Payments which have been paid to the Council in accordance with the terms of this Deed to the person who made the payment

Use and Repayment of other contributions

- 2 The Council hereby covenants to place all sums received under the terms of this Deed into an interest bearing account when received and to use the same for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Developer and the Council shall agree.
- 3 The Council covenants with the Developer that it will pay such amount of the Nazeing Parish Council Payment the Travel Plan Monitoring Fee and the Highway Contribution made by to the Council under this Deed which have not been expended or committed to be spent in accordance with the provisions of this Deed to the person or body which made the payment within ten years of the date of receipt by the Council of such payment together with interest for the period from the date of payment to the date of refund.
- 4 The Council shall provide to the Developer such evidence, as the Developer shall reasonably require in order to confirm the expenditure of the Nazeing Parish Council Payment the Travel Plan Monitoring Fee the Ecological Sum and the Highway Contribution sums paid by the Developer under this Deed.

Discharge of obligations

5 At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

The Common Seal of **EPPING**)
FOREST DISTRICT COUNCIL)
was hereunto affixed in the)
presence of:)

Attestation Officer

Executed as a deed by)
OAKLAND PRIMECARE LIMITED)
acting by a Director)
in the presence of :-)

EXECUTED as a deed by)
SUSAN ESTHER WHALEY)
in the presence of :-)

EXECUTED as a deed by)
NICHOLAS BONE)
in the presence of :-)

EXECUTED as a deed by
BARCLAYS BANK PLC