

DATED

4th July

2013

DACORUM BOROUGH COUNCIL

and

HERTFORDSHIRE COUNTY COUNCIL

and

URC THAMES NORTH TRUST

relating to

Adeyfield Free Church Leverstock Green Road

Hemel Hempstead HP2 4HL

Steven Baker
Assistant Director
Legal Democratic and Regulatory
Dacorum Borough Council
Civic Centre,
Marlowes
Hemel Hempstead,
Hertfordshire HP1 1HH5730163.3

THIS DEED OF AGREEMENT is dated

2013 and made

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BETWEEN

- (1) **DACORUM BOROUGH COUNCIL** of Civic Centre Marlowes Hemel Hempstead Hertfordshire HP1 1HH (hereinafter called "the Council")
- (2) **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Hertford Hertfordshire ("the County Council") and
- (3) **URC THAMES NORTH TRUST** (company registration number 75432) of 32-34 Great Peter Street, London, SW1P 2DB ("the Owner").

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RECITALS:

- (A) The Council and the County Council are local planning authorities for the purposes of this Deed and for the purposes of the Act (as hereinafter defined) for the area within which the Property (as hereinafter defined) is situated and the Council is also a Principal Council within the meaning of the Local Government Act 1972 and the Local Government (Miscellaneous Provisions) Act 1982
- (B) The County Council is the Education Authority the Libraries Authority the Social Services Authority and the Fire and Rescue Authority for Hertfordshire
- (C) The Owner is registered as the proprietor of the freehold of the Property which is shown for identification purposes only edged red on the Plan and is registered at the Land Registry with Title Absolute under Title Numbers HD10100 and HD309915
- (D) The Owner applied to the Council by the Planning Application (as hereinafter defined) for planning permission to carry out the Development (as hereinafter defined)

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- (E) 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:-

1.1 DEFINITIONS AND INTERPRETATIONS

- 1.2 In this Deed the following expressions shall have the meanings set out below:-

"the Act"	the Town and Country Planning Act 1990 as amended or replaced
"Development"	the demolition of a church and redevelopment of site for 14 houses, comprising a mix of 2, 3 and 4 bed houses as semis, terraced and detached dwellings in two and three storeys, with parking, access road and amenity space as set out in the Planning Application
"Director of Environment"	the County Council's Chief Executive and Director of Environment for the time being which expression shall be deemed to include the servants agents and licensees of the Director of Environment
"Fire and Rescue Service"	that part of the County Council known as the Hertfordshire Fire and Rescue Service
"First Occupation"	occupation of the first Residential Unit but shall not include occupation for construction, or fitting

out or marketing and the term "First Occupy" shall be construed accordingly

"Implementation"

the carrying out pursuant to and in accordance with the Permission upon the Property of a material operation (as defined in Section 56(4)(a) to (d) of the Act) Provided That for the purpose of determining whether or not such a material operation has been carried out there shall be disregarded for the purposes of this Deed only works of site clearance, archaeological evaluation and investigation, demolition works, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, the construction to base course of the spine road and estate roads ground preparation works or other surveys or site inspections or investigations or the erection of hoardings or any temporary means of enclosure, the temporary display of site notices or advertisements or works undertaken by Statutory Undertakers and "Implement" and "Implemented" shall be construed accordingly

"Libraries Contribution"

means the sum of (TWO THOUSAND, NINE HUNDRED AND TWELVE POUNDS) £2,912.00, (index linked as hereinafter provided) towards the cost of additional library facilities serving the locality of the Development

"Permission"

such planning permission as is granted by the Council pursuant to the Planning Application

"Plan "

the plan annexed hereto

"Planning Application"

the planning application for the Development bearing Council reference number 4/00518/13/MFA

"Primary Education Contribution"

means the sum of THIRTY EIGHT THOUSAND EIGHT HUNDRED AND FIFTY POUNDS ONLY) £38,850.00 (index linked as hereinafter provided) towards the cost of primary educational facilities serving the locality of the Development

"Property"

the land shown for the purposes of identification only edged red on the Plan and known as Adeyfield Free Church, Leverstock Green Road, Hemel Hempstead HP2 4HL

"PUBSEC Index"

the Department for Business, Innovation and Skills Tender Price Index of Public Sector Non Housing Smoothed All-In Index or any successor to that index from time to time

"Replacement Church"

a replacement church building to ensure continuation of those social and community facilities currently provided by the existing church

"Residential Unit"

Any housing unit to be erected on the Property pursuant to the Permission including for the

"Secondary Education Contribution"

avoidance of doubt any flats or apartments

means the sum of (FORTY THREE THOUSAND SEVEN HUNDRED AND FOURTEEN POUNDS) (£43,714.00) (index linked as hereinafter provided) towards the cost of secondary educational facilities serving the locality of the Development

"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 Units and the water supply to them.

"Working Day"

any day other than a Saturday or a Sunday or a public holiday

"Youth Contribution"

means the sum of (EIGHT HUNDRED AND TWENTY POUNDS ONLY)(£820.00) (index linked as hereinafter provided) towards the cost of facilities for young people serving the locality of the Development

1.3 Clause headings are inserted in this Deed for reference only and are not deemed to form part of this Deed

- 1.4 Reference in this Deed to clauses sub-clauses and schedules are (unless otherwise expressly provided) references to the relevant clauses sub-clauses and schedules contained in this Deed
- 1.5 Words importing one gender import any other gender words importing the singular import the plural and vice versa and words denoting natural persons include firms corporations and companies and vice versa
- 1.6 The expression the "Owner" shall save where otherwise stated include its successors in title (including any freehold reversioner) and any person deriving title under or through the Owner to the Property or the relevant part of it
- 1.7 The expression "the Council" shall include any successor as the local planning authority and the expression "the County Council" shall include any successor as local planning authority education authority social services authority and fire and rescue authority
- 1.8 Words denoting an obligation on any party (whether as signatory or otherwise) to this Deed to do an act matter or thing include an obligation to procure that it be done and words placing any such party under a restriction include an obligation not to permit or allow infringement of the restriction
- 1.9 Any reference to a statute (whether or not specifically named) shall include any statute amending consolidating or replacing the same and for the time being in force and a reference to a statute includes all statutory instruments orders plans regulations byelaws permissions and directions for the time being made issued or given or deriving validity pursuant to the same and any amendments thereto or replacements thereof
- 1.10 Save as otherwise provided the covenants restrictions stipulations and obligations contained in this Deed shall be enforceable without any limit of time against the Owner and any successors in title of the Owner (including any freehold reversioner) or any person deriving title under or through the Owner or any part thereof as if that person had also been an original covenanting party in

respect of the interest or estate for the time being held by that person **PROVIDED ALWAYS THAT** no person shall be liable to perform any covenant or obligation made or given under this Deed once he shall have parted with all of his interest in the Property save in respect of any breach occurring during the period of his interest in the Property

- 1.11 No waiver (whether express or implied) by the Council and/or the County Council of any breach or default in performing or observing any of the covenants restrictions stipulations or obligations contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and/or the County Council from enforcing any of such covenants restrictions stipulations or obligations or from acting upon any subsequent breach or default
- 1.12 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired and the parties hereby agree to execute any deeds or documents to give effect to the intention of the provisions such that the provisions in question will become valid, legal and enforceable.
- 1.13 Nothing in this Deed shall be construed as restricting the exercise by the Council or the County Council of any power or function exercisable by them under the Act or any other Act or authority
- 1.14 Any notice certificate or other written communication required to be served under the terms of this Deed shall be served on the party concerned by Recorded Delivery post during the Council's and the County Council's business hours of 10.00 a.m. to 4.00 p.m. on a Working Day at the person's address as herein stated or such other address as shall be notified by Recorded Delivery post from time to time
- 1.15 references to the Property include any part of it;
- 1.16 This Deed shall be registerable by the Council as a local land charge

1.17 Where under this Deed any approval, consent, expression of satisfaction or agreement is required to be given by any party such approval, consent, expression of satisfaction or agreement shall not be unreasonable or unreasonably withheld or delayed

1.23 Without prejudice to the Council's and the County Council's statutory rights the Owner hereby grants to the Council and/or 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 Property 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.

1.24 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;

2 PLANNING OBLIGATION

2.1 This Deed relates to and binds the Property and is made pursuant to the provisions of section 106 and Section 106A of the Act and the obligations hereinafter contained shall be planning obligations to which the provisions of Section 106 of the Act shall apply and the Council and the County Council are the local planning authorities by which the provisions of this Deed shall be enforceable and in so far as the covenants herein contained are not planning obligations within the meaning of the Act they are entered into pursuant to powers contained in Section 17 of the Housing Act 1985 Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 1 of the Localism Act 2011 and any other enabling powers

- 2.2 This Deed shall take effect immediately upon completion of this Deed.
- 2.3 This Deed shall terminate and cease to have any further effect if prior to Implementation, the Permission expires, is quashed or revoked or in so far as the provisions thereof remain to be observed and performed, if the Permission is quashed or revoked following Implementation (in each case other than at the request of the Owner)
- 2.5 All consideration given and payments made in accordance with the provisions of this agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this agreement then to the extent that VAT had not presently been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly
- 2.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 2.7 Nothing in this Deed shall be construed as imposing any obligation on any statutory undertaker who acquires an interest in the Property for the purpose of undertaking their statutory functions.
- 2.8 Nothing in this Deed shall be construed as imposing any obligation on a individual occupier of a Residential Unit

3 PLANNING OBLIGATIONS RELATING TO THE PROPERTY

THE OWNER

3.1 Subject to the provisions of clauses 1.10 the Owner and its successors in title hereby covenants and undertakes with the Council and the County Council and with each of them so as to bind the Property and every part thereof to carry out and comply with the obligations set out in this Deed and as follows

3.2 To give the Council and the County Council 10 Working Days notice in writing of their intention to Implement the Permission and further notify the County Council and the Council in writing or procure that they are so notified of each of the following events within 10 Working Days of such event occurring:

(i) Implementation of the Permission

(ii) completion of the Development

3.3 Not to Implement the Development until planning permission has been granted for a Replacement Church

3.4 Fire Hydrants

3.4.1 With regard to the water supply to the Development:

3.4.2 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 Implement or permit Implementation 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.

3.4.3 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.

3.4.4 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

3.4.5 not to First occupy or permit First occupation until such time as it is served by an adopted fire hydrant

3.4.6 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

3.5 Primary Education Contribution

3.5.1 Prior to Implementation to pay to the County Council the Primary Education Contribution

3.5.2 Not to Implement nor cause nor permit Implementation of the Development until the Primary Education Contribution has been paid to the County Council

3.7 Secondary Education Contribution

3.7.1 Prior to Implementation to pay to the County Council the Secondary Education Contribution

3.7.2 Not to Implement nor cause nor permit Implementation of the Development until the Secondary Education Contribution has been paid to the County Council.

3.8 Libraries Contribution

3.8.1 Prior to Implementation to pay to the County Council the Libraries Contribution

3.8.2 Not to Implement nor cause nor permit Implementation until the Libraries Contribution has been paid to the County Council.

3.9 Youth Contribution

3.9.1 Prior to Implementation to pay the Youth Contribution to the County Council

3.9.2 Not to Implement nor cause nor permit Implementation until the Youth Contribution has been paid to the County Council.

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4 LAND OWNERSHIP

The Owner covenants that they are the freehold owners of the Property under the title numbers listed in the recitals and no other person has a legal or beneficial interest in the Property.

5. EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of (inter alia (Rights of Third Parties) Act 1999 nothing in this Deed is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this Deed and their respective successors in title.

6 EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS

If prior to the receipt of any of the Primary Education Contribution the Secondary Education Contribution Libraries Contribution and the Youth Contribution the County Council incurs any expenditure in providing additional primary education secondary education library or youth 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 Secondary Education Contribution the Libraries Contribution and the Youth Contribution as the case may be deduct from the relevant contribution such expenditure incurred

7 INDEXATION

7.1 The Primary Education Contribution the Secondary Education Contribution the Libraries Contribution and the Youth Contribution shall each be index linked by reference to the PUBSEC Index figure of 175 to the finalised 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 in accordance with any change in the PUBSEC 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 Index for the date upon which the interim payment described below is actually paid and;

D is the figure of 175

7.4 Where any sum to be paid by the Owner under the terms of this Deed is required to be index linked then an interim payment shall initially be made using 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 14 days of written demand by the County Council and/or Council once the relevant indices have been finalised.

8. COSTS OF THIS DEED

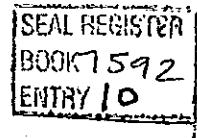
8.1 To pay on the date hereof the whole of the reasonable legal costs properly incurred by the Council and the County Council in the preparation of this Deed.

9. COUNTY COUNCIL

9.1 The County Council covenants with the Owner that it will pay to the person who paid the monies a sum equal to the amount of any payment made by the person who paid the monies to the County Council under this Deed which has not been expended 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.

9.2 The County Council covenants with the Owner this is will use the Primary Education Contribution the Secondary Education Contribution the Libraries Contribution and the Youth Contribution for the purposes set out in this Deed.

IN WITNESS whereof this Deed has been duly executed as a deed by the Owner the County Council and the Council but is not intended to have legal effect until it has been unconditionally delivered and dated.



The COMMON SEAL of
DACORUM BOROUGH
COUNCIL was hereunto affixed in
the presence of:-

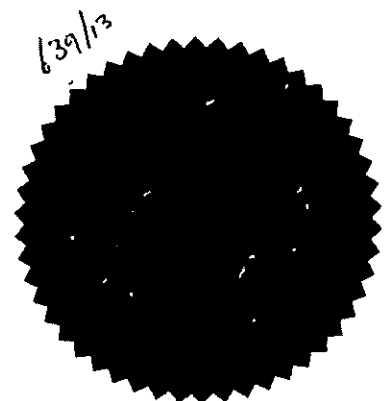

Authorised Signatory

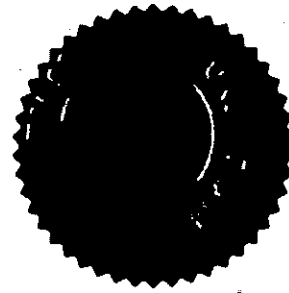

Authorised Signatory

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


Kathryn Pettitt

Chief Legal Officer





EXECUTED as a deed by
URC THAMES NORTH TRUST
acting by a director and its secretary
or two directors

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Director

S. Fairington

Secretary/Director

Keith Berry