

Dated 18 November 2019

AVEBURY AVENUE LIMITED (1)

AND

TONBRIDGE AND MALLING BOROUGH COUNCIL (2)

AND

ZORIN FINANCE LIMITED (3)

AND

POLLEN STREET SECURED LENDING PLC (4)

SECTION 106 AGREEMENT

**Planning Obligation by Deed under Section 106
of the Town and Country Planning Act 1990
relating to 2-12 Avebury Avenue. Tonbridge**

CONTENTS

Clause	Heading	Page
1	DEFINITIONS	2
2	CONSTRUCTION OF THIS DEED.....	6
3	LEGAL BASIS.....	6
4	CONDITIONALITY.....	7
5	COVENANTS BY THE OWNER.....	7
6	COVENANTS BY THE BOROUGH COUNCIL.....	7
7	MISCELLANEOUS	7
8	INDEXATION	8
9	INTEREST	9
10	PAYMENT, CALCULATION AND RECOVERY OF CONTRIBUTIONS	9
11	VAT	9
12	MORTGAGEE'S CONSENTS	10
13	NOTICES	10
14	DISPUTE PROVISIONS.....	10
15	JURISDICTION.....	11
16	DELIVERY	11
17	COSTS.....	11
	SCHEDULE 1 – OPEN SPACE COMMUTED SUM	12
	SCHEDULE 2 – NHS CONTRIBUTION.....	13
	SCHEDULE 3 – LIBRARIES CONTRIBUTION.....	14
	SCHEDULE 4 – AFFORDABLE HOUSING COMMUTED SUM.....	15
	PLAN 1 – SITE LOCATION PLAN	
	PLAN 2 – GROUND FLOOR PLAN (NOT INCLUDED IN APPLICATION)	

THIS DEED is dated

18th NOVEMBER

2019

PARTIES

- (1) **AVEBURY AVENUE LIMITED** (Co.Reg.No.10584996) whose registered address is The Stables, 23B Lenten Street, Alton, Hampshire GU34 1HG (the "**Owner**"); and
- (2) **TONBRIDGE AND MALLING BOROUGH COUNCIL** of Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ (the "**Borough Council**").
- (3) **ZORIN FINANCE LIMITED** (Co.Reg.No:07514913) whose registered office is 1 Knightsbridge Green, London SW1X 7NE and **POLLEN STREET SECURED LENDING PLC** (Co.Reg.No.08805459) whose registered office is 6th Floor, 65 Gresham Street, London EC2V 7NQ (the "**Mortgagee**")

RECITALS

- (A) The Borough Council is the local planning authority for the purposes of the Act for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property registered at the Land Registry under title nos K601649 and K302407 (in part) and for the purposes of identification only is outlined in red on the site location plan attached at Plan 1.
- (C) The Mortgagee has a registered charge over the Property dated 14 January 2019
- (D) There is a long leasehold (TT77126) which covers part of the ground floor of the Property which does not form part of the Application and which is therefore not bound by this Deed, as identified by an outline thick black line on the drawing attached at Plan 2
- (E) The Owner submitted the Application to the Borough Council on 1 February 2019.
- (F) The Parties agree that the obligations in this Deed are in the interests of the proper planning of the Borough Council's administrative area and that they are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.

(G) The County Council is the local authority for the purposes of the application of the Libraries Contribution for the area in which the Property is situated

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

2008 Act	the Housing and Regeneration Act 2008 (as amended);
Act	the Town and Country Planning Act 1990 as amended;
Affordable Housing	housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers), satisfying the affordable housing types set out in the NPPF February 2019 (or such national policy superseding it).
Affordable Housing Contribution	the sum of £229,959.00 (two hundred and twenty nine thousand nine hundred and fifty nine pounds) (£45,991.80 per dwelling) to be paid to the Borough Council by the Owner pursuant to Schedule 4 to be used towards the Affordable Housing Purpose;
Affordable Housing Purpose	the provision of Affordable Housing in the Borough
Application	the application for full planning permission for development comprising the alteration, extension and change of use of the existing building to a mixed use to comprise 23 (twenty three) apartments, with associated parking and allocated reference number TM/19/000287/FL

Commencement of Development	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is 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, the construction of site access roads and "Commence" "Commence Development" and "Commencement" shall be construed accordingly
County Council	the Kent County Council whose address is (FAO Economic Development) Invicta House, County Hall, Maidstone, Kent ME14 1XX, reference K/E/TM/19/00287/AG
Development	the development of the Property as set out in the Application
Dwelling	any dwelling to be constructed pursuant to the Planning Permission on the Property and FOR THE AVOIDANCE OF DOUBT includes any apartment constructed as part of the Development
Index	the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors or any similar successor index
Index Linked	the sum payable shall be increased or decreased in the same proportion as the percentage increase or decrease in the Index between the firm quarterly Index figure immediately preceding the date of this Deed and the firm quarterly Index figure for the quarter immediately preceding the date of actual payment and "Index" shall be construed

	accordingly
Interest	interest at two per cent above the base lending rate of the HSBC Bank Plc from time to time
NHS Contribution	the sum of £14,832.00 (fourteen thousand and eight hundred and thirty-two pounds) to be paid by the Owner to the Borough Council pursuant to Schedule 2 and used towards the NHS Contribution Purpose
NHS Contribution Purpose	the refurbishment, reconfiguration and/or extension at Warder's Medical Centre and/or Hildenborough Medical Group
NHS West Kent CCG	The NHS West Kent Clinical Commissioning Group which is responsible for the commissioning of health services in the area in which the Property is situate and whose registered address is Wharf House, Medway Wharf Road, Tonbridge, Kent TN9 1RE
Libraries Contribution	the sum of £1,104.36 (one thousand one hundred and four pounds and thirty-six pence) to be paid by the Owner to the Borough Council pursuant to Schedule 3 and used towards the Libraries Contribution Purpose
Libraries Contribution Purpose	the provision of additional library books in Tonbridge North to meet the demand generated by the new borrowers occupying the Development
Occupation and Occupied	occupation of any building forming part of the Development as permitted by the Planning Permission but for the avoidance of doubt 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;
Open Market Units	those Dwellings for sale lease or other disposal on the open

market;

Open Space	the facilities to be provided within the vicinity of the Development comprising Parks and Gardens, Amenity Green Spaces, Outdoor Sports Facilities and Children's and Young People's Play Areas (as defined in policy OS3 of the Borough Council's Managing Development and the Environment DPD (April 2010) ;
Open Space Calculator	the open space calculator submitted in accordance with Schedule 1 and Annex D (Open Space Provision pursuant to Policy OS3) of the Council's Managing Development and the Environment DPD (April 2010)
Open Space Commuted Sum	a contribution which shall be calculated in accordance with the Open Space Calculator and to be paid to the Borough Council by the Owner pursuant to Schedule 1 and used towards the acquisition management and maintenance of Open Space;
Plan 1	the drawing reference 18.004/01 dated 31.01.2019 entitled "Site Location Plan" produced by On Architecture and attached here at Appendix 1
Plan 2	the drawing reference 18.004/10 dated 31.01.2019 entitled "Proposed Ground Floor Plan" produced by On Architecture and attached hereto at Appendix 2
Planning Permission	the planning permission subject to conditions to be granted pursuant to the Application;
Property	the land within the ownership of the Owner known as 2-12 Avebury Avenue, Tonbridge, Kent and identified edged red on Plan 1 appended to this Deed;
Working Day	any day which is not a Saturday, Sunday or Bank Holiday.

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 severally.
- 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.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Borough Council as local planning authority against the Owner and any person deriving title from the Owner.
- 3.3 Subject to clause 7.7 this Deed shall be enforceable against the Owner and any person deriving title from the Owner.
- 3.4 None of the planning obligations contained in this Deed shall be binding upon:

(a) individual householders or occupational tenants of the Development, their mortgagees or successors in title; or

(b) statutory undertakers.

4 CONDITIONALITY

4.1 Other than the obligations set out at clause 4.2 which shall have immediate effect, the obligations in the schedules are conditional upon:

(a) the grant of the Planning Permission; and

(b) the Commencement of Development.

4.2 The obligations referred to in clause 4.1 which have immediate effect are clauses 16 and 17

5 COVENANTS BY THE OWNER

The Owner covenants with the Borough Council to observe and perform the covenants, obligations, agreements and restrictions set out in the Schedules.

6 COVENANTS BY THE BOROUGH COUNCIL

The Borough Council covenants with the Owner as set out in the Schedules

7 MISCELLANEOUS

7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 save for as against the recipients of any of the contributions outlined in this Deed for whom a statutory obligation to provide the Purposes set out herein exists

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

7.3 Where the Deed, approval, consent or expression of satisfaction is required by the Owner from the Borough Council under the terms of this Deed such Deed, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such Deed, consent, approval or expression of satisfaction shall be given on behalf of the Borough Council

by the Head of Development Management or such other officer as the Borough Council may nominate.

- 7.4 Any notices shall be deemed to have been properly served if sent by first class post to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 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.
- 7.6 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.7 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 that part of the Property to which the planning obligation relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.8 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Borough Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.9 Nothing in this Deed shall prevent the development of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.10 Where the consent, approval or agreement of a party to this Deed is required such consent approval or agreement shall not be unreasonably withheld or delayed.

8 INDEXATION

Any sum referred to in the schedules shall be Index Linked.

9 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.

10 PAYMENT, CALCULATION AND RECOVERY OF CONTRIBUTIONS

10.1 Payment of the contributions referred to in this Deed shall be made on the basis that the contribution shall only be applied towards the purposes specified in the relevant schedule to this Deed PROVIDED THAT if the whole or any part of such contribution has not been expended for such purpose (or is otherwise not committed to be expended pursuant to a legally binding obligation) at the expiration of the period of ten years from receipt of payment of that contribution (or where that sum is to be paid in instalments the period of five years from receipt of the last instalment) then upon written request by the Owner the Borough Council shall repay to the Owner the unspent part and any part that is not allocated together with any interest accrued thereon (subject to deduction of any tax properly payable) within 28 Working Days of the written request referred to herein.

10.2 Where the contribution is paid by the Borough Council to either the County Council or the NHS West Kent CCG (or their successors in function) for a purpose to be applied in accordance with this Deed, the Borough Council shall upon written request by the Owner use its best endeavours to seek to recover from the relevant recipient of the contribution, or reasonably assist the Owner in doing so, any amount of the contribution either in whole or in part which has not been expended on the purpose identified in this Deed (or is otherwise not committed to be expended pursuant to a legally binding obligation) at the expiration of the period of ten (10) years from the receipt of payment to the County Council or the NHS West Kent CCG (or where that sum is to be paid in instalments the period of five years from the receipt of the last instalment) and shall repay to the Owner such sums so recovered from the County Council or the NHS West Kent CCG within 28 Working Days of receipt of the same

11 VAT

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

12 MORTGAGEE'S CONSENTS

12.1 The Mortgagee hereby consents to the completion of this Deed and agrees that its interest in the Property shall be bound by the terms of this Deed but for the avoidance of doubt the Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

13 NOTICES

13.1 The Owner shall serve written advance notice on the Borough Council at least ten (10) Working Days prior to:

- (a) the Commencement of Development;
- (b) Occupation of the 12th Dwelling; and
- (c) Occupation of the final Dwelling.

14 DISPUTE PROVISIONS

14.1 In the event of any dispute or difference arising between any of the parties to this Deed (other than the financial contributions payable as set out in this deed which are not in dispute) in respect of any matter contained in this Deed such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

14.2 In the absence of agreements as to the appointment or suitability of the person to be appointed pursuant to clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and

his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within twenty Working Days or such other period as the parties shall agree of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further twenty Working Days or such other period as the parties shall agree.

15 JURISDICTION

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

16 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.

17 COSTS

The Developer covenants with the Borough Council to pay on demand the Borough Council's reasonable legal costs incurred in connection with the preparation and completion of this Deed.

SCHEDULE 1 – OPEN SPACE COMMUTED SUM

- 1 The Owner shall submit a completed Open Space Calculator to the Borough Council as part of an application for reserved matters approval pursuant to the Planning Permission.
- 2 The Owner will pay the Open Space Commuted Sum to the Borough Council in the following manner:
 - 2.1. 50% to be paid prior to the occupation of any Dwelling
 - 2.2. the balance to be paid prior to the Occupation of the 12th Dwelling

SCHEDULE 2 – NHS CONTRIBUTION

- 1 The Owner covenants with the Borough Council to pay the NHS Contribution prior to the Occupation of the 12th Dwelling to be Occupied and not to Occupy nor cause nor permit Occupation of more than 12 Dwellings until the NHS Contribution has been paid to the Borough Council.

2. The Borough Council hereby covenants with the Owner to:
 - 2.1 provide a written form of receipt for payment of the NHS Contribution on receipt of the NHS Contribution;

 - 2.2 pay the NHS Contribution to the NHS West Kent CCG upon receipt of a document from the NHS West Kent CCG:
 - (a) confirming that they will apply the NHS Contribution solely for the NHS Contribution Purpose;

 - (b) providing full details of the expenditure of the NHS Contribution which details shall comprise either a receipt for expenditure incurred or a contract committing such expenditure;

 - (c) confirming that they will return any unspent part of the NHS Contribution together with interest accrued to the Owner after the expiry of five years from the date of receipt by the Borough Council of the NHS Contribution.

 - 2.3 keep an up to date record of all payments from the NHS Contribution transferred by the Borough Council to the NHS West Kent CCG;

3. The Owner acknowledges that the Borough Council shall not be responsible for how the NHS Contribution is utilised or in the event that the NHS West Kent CCG does not comply with paragraph 2.2(c) above once it has transferred the NHS Contribution to the NHS West Kent CCG but without prejudice to the rights of the Owner to seek to enforce any obligations to repay the NHS Contribution directly against the NHS West Kent CCG.

SCHEDULE 3 – LIBRARIES CONTRIBUTION

1. The Owner covenants with the Borough Council to pay the Libraries Contribution prior to the Occupation of the 12th Dwelling to be Occupied and not to Occupy nor cause nor permit Occupation of more than 12 Dwellings until the Libraries Contribution has been paid to the Borough Council.
2. The Borough Council hereby covenants with the Owner to:
 - 2.1 provide a written form of receipt for payment of the Libraries Contribution on receipt of the Libraries Contribution;
 - 2.2 pay the Libraries Contribution to the County Council upon receipt of a document from the County Council:
 - (a) confirming that they will apply the Libraries Contribution solely for the Libraries Contribution Purpose;
 - (b) providing full details of the expenditure of the Libraries Contribution which details shall comprise either a receipt for expenditure incurred or a contract committing such expenditure;
 - (c) confirming that they will return any unspent part of the Libraries Contribution together with interest accrued to the Owner after the expiry of five years from the date of receipt by the Borough Council of the Libraries Contribution.
 - 2.3 keep an up to date record of all payments from the Libraries Contribution transferred by the Borough Council to the County Council;
3. The Owner acknowledges that the Borough Council shall not be responsible for how the Libraries Contribution is utilised or in the event that the County Council does not comply with paragraph 2.2(c) above once it has transferred the Libraries Contribution to the County Council but without prejudice to the rights of the Owner to seek to enforce any obligations to repay the Libraries Contribution directly against the County Council.

SCHEDULE 4 – AFFORDABLE HOUSING COMMUTED SUM

1. The Owner will pay the Affordable Housing Commuted Sum to the Borough Council in the following manner:
 - 1.1. 50% to be paid prior to the occupation of any Dwelling
 - 1.2. the balance to be paid prior to the Occupation of the 12th Dwelling

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

**THE COMMON SEAL of
TONBRIDGE AND MALLING
BOROUGH COUNCIL**

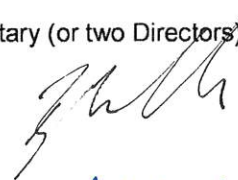
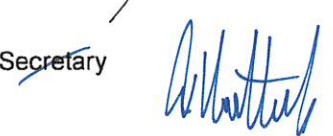


was affixed in the presence of:


Authorised Signatory

**EXECUTED as a DEED by
AVEBURY AVENUE LIMITED**

acting by a Director and its Secretary (or two Directors)

Director 
Director/Secretary 

EXECUTED as a DEED by

ZORIN FINANCE LIMITED

acting by a Director 

in the presence of:

Name: 

Address:

Occupation: 


Director

ROBERTA TOURISH

CREDIT RISK

1 Knightsbridge Green
London
SW1X 7NE

EXECUTED as a DEED by PSC Credit Holdings LLP

acting by 

as attorney for

Pollen Street Secured Lending PLC


in the presence of:

Name: 

Address:

Occupation:


H GARLAND


BRAIDEN
11-12 MANOVER SQ
INVESTMENT MANAGER

APPENDIX 1

Plan 1 - Site Location Plan



Ordnance Survey, (c) Crown Copyright, 2018. All rights reserved. Licence number 100022432



 SITE APPLICATION BOUNDARY

 EXISTING SUBROUNDED B&I CONCRET

APPENDIX 2

Plan 2 – Ground Floor Plan (not included in Application)

