DATED **2025**

THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE

AND

DURHAM DIOCESAN BOARD OF FINANCE

AND

TELMAC DEVELOPMENTS LIMITED

AGREEMENT

Under section 106 of the Town and Country Planning Act 1990

Former Boldon CE Primary School site

Rectory Bank, North Road, West Boldon NE36 0QE Planning application reference ST/0754/23/FUL

John Rumney
Corporate Lead – Legal & Governance
South Tyneside Council
Town Hall and Civic Offices
Westoe Road
South Shields
Tyne and Wear
Ref: BB/L/XXX

This deed is dated 2025

PARTIES

(1) **THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** of Town Hall and Civic Offices, Westoe Road, South Shields NE33 2RL **(Council)**

(2) **DURHAM DIOCESAN BOARD OF FINANCE** (CRN 00192018) of Cuthbert House, Stonebridge, Durham, DH1 3RY **(Chargee)**

(3) **TELMAC DEVELOPMENTS LIMITED** (Company Registration No.12913817) whose registered office is situate at 5a Station Road, East Boldon, Tyne and Wear, NE36 0LJ **(Owner)**

BACKGROUND

A. The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.

B. The Owner is the freehold owner of the Property title number TY599042 free from encumbrances that would prevent the Owner entering into this deed.

C. The Chargee has the benefit of a charge dated 3rd August 2023.

D. The Owner has made the Planning Application and is proposing to carry out the Development.

E. The Council is minded togrant Planning Permission for the Development subject to the prior completion of this deed.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed:

1.1. **Definitions:**

Base Rate: the base rate from time to time of Lloyds Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations:

a) demolition works;

b) site clearance;

c) ground investigations;

d) site survey works;

e) temporary access construction works;

f) archaeological investigation; and

g) erection of any fences and hoardings around the Property.

(and the date the Development "Commences" or a covenant not to "Commence" the Development shall be construed accordingly)

Commencement Date: the date Development Commences.

Default Interest Rate: 4% per annum above the Base Rate.

Development: proposed change of use of grassland to residential curtilage and enclosure of land through erection of close boarded fencing.

Index Linked: increased in accordance with the following formula:

Amount payable = the payment specified in this deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

Occupation: the physical use of land or buildings for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction or fitting out, or occupation for marketing or display, or occupation in relation to security operations and **Occupy**, **Occupied** and **Occupier** shall be construed accordingly.

"Offsite Biodiversity Net Gain Contribution" the sum of £3658.50 (three thousand six hundred and fifty-eight pound and fifty pence only) towards measures within the borough of South Tyneside to compensate for the adverse impacts on biodiversity arising from the Development and to secure a net gain to biodiversity;

Plan 1: the plan attached as Annex A.

Planning Application: the application for full planning permission registered by the Council on 9 January 2024 under reference number ST/0754/23/FUL.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application in the draft form attached as Annex B.

Property: the land forming the site of the former Boldon CE Primary School, Rectory Bank, North Road, West Boldon NE36 0QE shown edged red on Plan 1 and registered at HM Land Registry with absolute title under title number TY508003.

TCPA 1990: Town and Country Planning Act 1990.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1.2. Clause headings shall not affect the interpretation of this deed.

1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7. A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.

1.8. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10. References to the Property include any part of it.

1.11. Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

1.12. A reference to **writing** or **written** excludes faxes and e-mail.

1.13. A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.14. Unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed, and references in a Schedule to a Part or a paragraph are to a Part or a paragraph of that Schedule.

1.15. An obligation on a party not to do something includes an obligation not to allow that thing to be

done.

1.16. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.17. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

2.1. The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.

2.2. The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

2.3. To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the TCPA 1990, they are entered into pursuant to the powers contained in section 1 Localism Act 2011, section 111 Local Government Act 1972 and all other enabling powers.

3. CONDITIONALITY

3.1. Subject to clause 3.2, the obligations contained in clauses 4 and 5 and the Schedules referred to in those clauses shall not come into effect unless and until the following have occurred:

3.1.1. the Planning Permission is granted; and

3.1.2. the Commencement of Development.

3.2. Clause 3.1 shall not apply to the obligation at paragraphs 1.1 and 1.2 of Schedule 1 (as applied by clause 4), which shall have immediate effect.

4. COVENANTS TO THE COUNCIL

The Owner covenants with the Council to:

a) observe and perform the covenants, restrictions and obligations contained in Schedule 1 in relation to the Development and so as to bind the Property.

b) give at least 10 Working Days written notice to the Council of the intended Commencement Date.

5. COVENANTS BY THE COUNCIL

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2.

6. INDEXATION

6.1. All financial contributions payable to the Council shall be Index Linked.

6.2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

7. LIABILITY

7.1. The obligations in this deed shall not be enforceable against a statutory undertaker whose only interest in any part of the Property is held for the purposes of its undertaking.

8. RELEASE

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

9. DETERMINATION OF DEED

The obligations in this deed (except for Clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission:

9.1. expires;

9.2. is varied or revoked other than at the request of the Owner; or

9.3. is quashed following a successful legal challenge.

10. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

11. COUNCIL'S COSTS

The Owner shall pay to the Council on or before the date of this deed £1,500.00 towards the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.

12. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

13. OWNERSHIP

13.1. Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

13.1.1. the name and address of the person to whom the disposition was made; and

13.1.2. the nature and extent of the interest disposed of.

14. REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the Council shall not be unreasonably withheld or delayed

15. CANCELLATION OF ENTRIES

15.1. On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

15.2. Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to Clause 9 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

16. DISPUTES

16.1. In the event of any dispute arising between the parties, the parties will attempt to resolve that dispute amicably including holding a meeting attended by at least one representative from each party.

16.2. If the parties are unable to resolve the dispute amicably pursuant to clause 16.1, one party may by serving notice on all the other parties (the **Notice**) refer the dispute to an Expert for determination.

16.3. The Notice must specify:

16.3.1. the nature basis and brief description of the dispute;

16.3.2. the clause or paragraph of this Deed pursuant to which the dispute has arisen; and

16.3.3. the name and address of the proposed Expert.

16.4. In the event that the parties are unable to agree whom should be appointed as an Expert within 20 Working Days after the date of the Notice then either party may request to the President of the Law Society to nominate the Expert at their joint expense

16.5. The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the dispute in equal shares.

16.6. The Expert will be appointed subject to an express requirement that he reaches his decision and

communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not later than 56 days from the date of his appointment to act.

16.7. The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 30 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 20 Working Days in respect of any such submission and material.

17. NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

18. WAIVER

No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. FUTURE PERMISSIONS

19.1. Nothing in this deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission.

19.2. For the avoidance of doubt, this deed shall continue in full force and effect notwithstanding any change made by the Council to the planning permission pursuant to section 96A of the 1990 Act following an application made under that section.

20. AGREEMENTS AND DECLARATIONS

The parties agree that:

20.1. nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and

20.2. nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

21. NOTICES

21.1. Any notice or other communication to be given under this deed must be in writing and must be:

21.1.1. delivered by hand; or

21.1.2. sent by pre-paid first-class post or other next working day delivery service.

21.2. Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

21.2.1. to the Council at Town Hall and Civic Offices, Westoe Road, South Shields NE33 2RL marked for the attention of the John Rumney, Corporate Lead – Legal & Governance;

21.2.2. to the Chargee at Durham Diocesan Board of Finance, Cuthbert House, Stonebridge, Durham, DH1 3RY;

21.2.3. to the Owner at Telmac Developments Ltd 5a Station Road, East Boldon, Tyne and Wear, NE36 0LJ marked for the attention of Paul Telford

or as otherwise specified by the relevant party by notice in writing to each other party.

21.3. Any notice or other communication given in accordance with Clause 21.1 and Clause 21.2 will be deemed to have been received:

21.3.1. if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

21.3.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

21.4. A notice or other communication given under this deed shall not be validly given if sent by e-mail.

21.5. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

23. VALUE ADDED TAX

23.1. Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

23.2. If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

24. THE OWNER'S ACKNOWLEDGEMENT

The Owner acknowledges that the Property is bound by the planning obligations as set out in this deed.

25. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in

accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by affixing the common seal of THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE in the presence of:

……

Mayor/Authorised signatory

……

Corporate Lead – Legal & Governance /Authorised signatory

Executed as a deed by affixing the common seal of Durham Diocesan Board of Finance in the presence of:

Signature of Director:.....

Signature of Director/Secretary:.....

Executed as a deed by **TELMAC DEVELOPMENTS LIMITED** acting by a Director in the presence of:

Witness signature……

Witness name…….

Witness address…….

……

Witness occupation……

SCHEDULE 1
FINANCIAL CONTRIBUTION

1. OFFSITE BIODIVERSITY NET GAIN CONTRIBUTION

1.1. To pay to the Council the Offsite Biodiversity Net Gain Contribution prior to the Commencement of the Development.

1.2. Not to Commence the Development until the amount at paragraph 1.1 has been paid in full to the Council.

SCHEDULE 2

COVENANTS BY THE COUNCIL

The Council covenants to the Owner as follows:

1. To pay all financial contributions into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable following receipt.

2. Not to use any part of the financial contributions other than for the purposes for which they have been paid, PROVIDED THAT the parties hereby agree and acknowledge the Council may transfer or transmit any financial contribution (or part thereof) or an equivalent amount to a third party for use by that person in place of the Council for the purposes of satisfying this Paragraph 2, but in any such case the Council shall:

    a) take reasonable steps to ensure that such person expends or commits the monies so transferred or transmitted for the purposes for which they were paid, and

    b) obtain evidence from such person that such monies were expended or committed for expenditure for the purposes for which they were paid and provide the Owner with copies of such evidence upon request.

3. If the Offsite Biodiversity Net Gain Contribution financial contribution has not been spent or committed for expenditure by the Council within thirty years following the date of it being due or received (whichever is later) the Council shall refund to the payer any part of the financial contribution which has not been spent or committed for expenditure, together with any accrued interest.

4. The Council shall provide to the Owner or payer such evidence as the Owner or payer shall reasonably require in order to confirm the expenditure of sums under this Deed.

ANNEX A

PLAN 1

ANNEX B

DRAFT PLANNING PERMISSION