

DATED 30th January 2020

- (1) IPSWICH BOROUGH COUNCIL  
-and-  
(2) SUFFOLK COUNTY COUNCIL  
-and-  
(3) CBRE SPUK III (NO. 45) LIMITED  
-and-  
(4) THE KESGRAVE COVENANT LIMITED  
-and-  
(5) WO & PO JOLLY HOLDINGS LIMITED  
-and-  
(6) MAUREEN CYNTHIA MOYES

PLANNING OBLIGATION BY DEED  
PURSUANT TO SECTION 106 OF THE  
TOWN AND COUNTRY PLANNING  
ACT 1990

RELATING TO

LAND WEST OF WESTERFIELD ROAD,  
IPSWICH IP4

Certified a true copy of the original document

Authorised Officer Date 19.02.2020

Legal Services  
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Ipswich IP1 2DE

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THIS DEED is made on

30th January

2020

**BETWEEN:**

- (1) **IPSWICH BOROUGH COUNCIL** of Grafton House, 15-17 Russell Road, Ipswich, Suffolk, IP1 2DE ("**Borough Council**");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("**County Council**");
- (3) **CBRE SPUK III (NO. 45) LIMITED** (incorporated in Jersey) care of CBRE Investors, 21 Bryanston Street, London, W1H 7PR ("**the Owner**");
- (4) **THE KESGRAVE COVENANT LIMITED** (company number 1902478) of Philip House, St William Comi, Main Road, Kesgrave, Ipswich, Suffolk IP5 2QP ("**Mortgagee 1**");
- (5) **WO & PO JOLLY HOLDINGS LIMITED** (company number 2943137) of Philip House, St William Court, Main Road, Kesgrave, Ipswich, Suffolk IP5 2QP ("**Mortgagee 2**"); and
- (6) **MAUREEN CYNTHIA MOYES** of South Lodge, 4 Summerfield Court, Ipswich IP4 3QZ ("**Mortgagee 3**").

**BACKGROUND:**

- A The Borough Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations in this Deed are enforceable.
- B The Borough Council and the County Council are the appropriate bodies to enforce this Deed for the purposes of section 106 of the 1990 Act.
- C The County Council is the local education authority, local library authority, local waste authority, local highway authority (except for trunk roads) for the 1980 Act and is also a local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations in this Deed are enforceable.
- D The Owner is the freehold owner of the Site registered under the numbers SKI 85688, SK294095, SK186081, SK243150, SK226398, SK178090, SK65912 and SK112805.
- E The Mortgagees are mortgagees of the Site by virtue of a registered charge dated 4 May 2010 and a Unilateral Notice in respect of a planning payment supplemental to an Agreement for sale dated 4 April 2007 registered against Title Numbers SK185688, SK294095, SK186081, SK243150, SK178090, SK65912 and SK112805 and the Mortgagees acknowledge that the Site shall be bound by the provisions of this Deed.
- F The Application was submitted by Mersea Homes (Ipswich) Limited and CBRE SPUK III (No. 45) Limited and was received by the Borough Council on 16 July 2014 for the Development.
- G In considering the Application the Borough Council has had regard to its development plan and all other material considerations. The Borough Council considers it expedient in the interest of proper planning of its area and having regard to all other material considerations that provision should be made for regulating the Development and use of the Site in the manner set out in this Deed.

H The Parties have agreed to enter into this Deed as a planning obligation under the 1990 Act in order to secure the planning obligations contained in Schedules 1 to 12 and 15 and 16 this Deed accepting that those obligations are necessary to make the Development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development in compliance with Regulation 122 of the CIL Regulations.

I The Borough Council resolved to grant Planning Permission pursuant to the Application subject to the conditions set out in the Planning Permission and subject to the covenants, undertakings and restrictions contained in this Deed.

These recitals, the schedules (including Standard Terms and Conditions of Funding) and the Appendices to this Deed are incorporated into and form part of this Deed.

## NOW THIS DEED WITNESSES AS FOLLOWS:

### 1. DEFINITIONS

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

"**1972 Act**" means the Local Government Act 1972;

"**1980 Act**" means the Highways Act 1980;

"**1982 Act**" means Local Government (Miscellaneous Provisions) Act 1982;

"**1990 Act**" means the Town and Country Planning Act 1990;

"**2008 Act**" means the Housing and Regeneration Act 2008;

"**2011 Act**" means the Localism Act 2011;

"**Affordable Housing**" shall have the meaning afforded to it in Annex 2 of the National Planning Policy Framework dated July 2019 (as may be amended from time to time or such other national policy that may from time to time replace and/or update this framework);

"**Affordable Housing Contract**" means a binding contract between the Owner and the Affordable Housing Provider for the transfer and construction of the Affordable Housing Units within a whole or part of a Phase to the Affordable Housing Provider;

"**Affordable Housing Delivery Plan**" means a plan for the delivery of Affordable Housing Units (excluding any Deferred Affordable Housing Units) within the whole or part of any relevant Phase of the Development that includes Affordable Housing Units to be approved by the Borough Council and shall include the details submitted pursuant to condition 21(i)(b) of the Planning Permission detailing the type, tenure, size and location of the Affordable Housing Units and demonstrating that the mix of Affordable Housing Units proposed within the plan for the whole or part of that Phase accords with the Affordable Housing Mix as set out in Schedule 2 to this Deed and further demonstrating how the mix shall be secured across the remaining Phases within the first 456 (four hundred and fifty six) Residential Units;

"**Affordable Housing Mix**" means the type, tenure and number of Affordable Housing Units as set out in paragraph 9 of Part 1 Schedule 2 or otherwise agreed in Writing at any time with the Borough Council;

"**Affordable Housing Policy Requirement**" means the Borough Council's Core Strategy Policy CS10 to seek to achieve up to 35% Affordable Housing across this Development in the

Ipswich Garden Suburb (IGS) or such lower percentage in adopted policy as applicable at the relevant time;

**"Affordable Housing Provider"** means an Approved Affordable Housing Provider or another registered provider of social housing as defined in section 80(2)(a) of Part 2 of the Housing and Regeneration Act 2008 approved in accordance with paragraph 4 of Part 1 of Schedule 2;

**"Affordable Housing Unit"** means a Residential Unit provided as Affordable Housing (including Deferred Affordable Housing Units) in Perpetuity (save where provided otherwise in paragraph 11.1 of Part 1 of Schedule 2 of this Deed);

**"Affordable Rented Units"** means those Affordable Housing Units that are to be let by Affordable Housing Providers to Eligible Households at rents (inclusive of all service charges and capped at 80% of Open Market Rents) and **"Affordable Rented"** is to be construed accordingly;

**"Air Quality Monitoring Contribution"** means the sum of £5,000 (five thousand pounds) Index Linked toward the air quality monitoring and implementing appropriate measures from the Borough Council's Air Quality Action Plan;

**"Alternative Affordable Housing Provider (AAHP)"** means Handford Homes Lettings Limited who is not an Affordable Housing Provider but is otherwise approved by the Council to manage Affordable Housing (including approval of the details of how it proposes to manage the relevant Affordable Housing Units);

**"Alternative Diversion Route"** means in relation to that part of the Temporary Diversion Route that is within the Site such alternative route as may be agreed between the County Council the Borough Council the Owner and the Northern Land Owner (all acting reasonably) to secure a suitable and appropriate direct route from existing FP18 to Westerfield Road but within that part of the Site labelled G8 on Drawing number CG1003-0 PA-003 Rev B and in determining the location of any alternative diversion route within the Site consideration shall be given to avoiding any built development or associated infrastructure on the Site and the location of any proposals for development included in any Reserved Matters Approval(s) which relate to the relevant area of the Site at such time that the Temporary Diversion Strategy is submitted for approval;

**"Application"** means the outline application for planning permission to authorise the Development on the Site with reference number: **14/00638/OUTFL** made under the 1990 Act to the Borough Council;

**"Approved Affordable Housing Providers"** means Clarion Housing Group, Flagship Housing Group; Orbit East; Orwell Housing Association; Suffolk Housing (Iceni Homes); the AAHP PROVIDED THAT nothing in this Deed shall fetter the Borough Council's discretion to declare any one of the Approved Affordable Housing Providers no longer approved for the purposes of the Development and the Borough Council shall promptly notify the Owner in writing in such instances PROVIDED FURTHER THAT where the Borough Council have notified the Owner that any Approved Affordable Housing Provider is no longer approved this shall not have any effect on any Affordable Housing Contracts already entered into at the time of receipt of such notification and the Owner shall be entitled to continue to deal with such Affordable Housing Providers pursuant to any existing Affordable Housing Contracts AND the Owner shall be entitled to seek the Borough Council's approval to alternative and/or additional Affordable Housing Providers;

**"BC Contribution Underspend"** means where the Purpose of a Borough Council Contribution(s) has/have been achieved at a cost lower than the Contribution paid;

**"BCIS Indexation"** means indexation by reference to the General Building Cost Index as published by the Royal Institute of Chartered Surveyors' Building Cost Information Service or any replacement of that index from time to time or (if there is no replacement of) such other appropriate alternative index agreed between the Parties;

**"Borough Area"** means the administrative area of the Borough of Ipswich;

**"Borough Council's Assessor"** means such suitably qualified and experienced assessor who is a professional member of RICS of not less than 10 years' experience to be agreed by the Owner and the Borough Council;

**"Borough Council Contributions"** means those Contributions (including any Deferred Contributions) payable by the Owner to the Borough Council;

**"Bridge Plan"** means drawing number 18837-SK06 at Annexure 1;

**"Bridge Works"** means the Pedestrian and Cycle Railway Bridge Works and the Vehicular Railway Bridge Works;

**"Bus Service Contribution"** means the sum of £448,250 (four hundred and forty eight thousand two hundred and fifty pounds) Index Linked;

**"Bus Stop Improvements Contribution"** means the sum of £56,000 (fifty six thousand pounds) Index Linked;

**"Bus Stop Plan"** means the plan attached to this Deed at Appendix 3 entitled "Existing Bus Stops to be Improved";

**"Challenged Permission"** means the Planning Permission being the subject of any judicial review proceedings or other legal challenge by third parties including, but not limited to, the application for permission to apply for judicial review and **"Challenge"** will be interpreted accordingly;

**"CIL"** means the charge created pursuant to section 205 of the 2008 Act and regulation 3 of the CIL Regulations and referred to as the Community Infrastructure Levy in those enactments;

**"CIL Regulations"** means the Community Infrastructure Levy Regulations 2010 (as amended);

**"Commencement of Development"** means the carrying out of a Material Operation pursuant to the Planning Permission within the Site (and related expressions such as 'Commence Development' shall be construed accordingly);

**"Commencement Date"** means the date of the Commencement of Development;

**"Commencement Notice"** means written notice to be given by the Owner to the Borough Council and County Council stating the Commencement Date;

**"Commercial Unit"** means any unit which is not a Residential Unit forming part of the Development;



**"Committed"** means the expenditure of any Contribution or part Contribution or entrance into a Contribution Contract by the Borough Council or the County Council (as relevant) in order to discharge obligations on the Borough Council or the County Council (as relevant) or apply any monies in accordance with the provisions of this Deed;

**"Community Development Contribution"** means the sum of £84,120 (eighty four thousand one hundred and twenty pounds) Index Linked towards a community development officer and community events and activities;

**"Community Space"** means a serviced site of 0.4 ha for community uses within the District Centre (NC2) with a minimum area of 0.2ha provided for health and/or wellbeing and/or treatment services;

**"Community Space Transfer"** means the transfer for the Community Space;

**"Completion"** means the proper issue of a certificate of practical completion of any works carried out pursuant to this Deed or as the context may allow as part, section, Plot, Parcel or Phase thereof by an independent architect, engineer or other certifying professional as the case may be and the terms **"Complete"**, **"Completed"** and cognate expressions shall be construed accordingly;

**"Construction Training and Employment Plan"** means a Construction Training & Employment Plan which seeks to maximise job opportunities for residents of the Borough Area through:

- (a) the creation of job opportunities for the construction phases of the Development;
- (b) the provision of skills training;
- (c) the means for advertising all vacancies (including subcontractor organisation vacancies) arising during the construction of the development ;
- (d) the identification of appropriate training courses and encouraging and assisting applicants for employment who are not currently qualified for a particular vacancy to obtain the necessary training and qualifications;
- (e) the means of recruitment of local staff through the Job Centre Plus and other professional recruitment partners, and
- (f) the means of ensuring and promoting equal opportunities as part of the employment process;

**"Contributions"** shall mean each of the following: Deferred Contributions, Bus Service Contribution, Bus Stop Improvements Contribution, Community Development Contribution, Country Park Commuted Sum, Early Years Contribution, Primary Education Contribution, Secondary Education Contribution, Sixth Form Education Contribution, Multi-Use Games Area Contribution, Public Rights of Way Contribution, Rail Infrastructure Contribution, Health Care Facilities Contribution, Library Contribution, Monitoring Contribution, Air Quality Monitoring Contribution, Habitats Regulations Assessment Monitoring Contribution, Off Site Sustainable Transport Contribution, Police Services Contribution, Off-Site Traffic Management Contribution, Travel Plan Evaluation and Support Contribution, Travel Plans Implementation Bond, TRO Contribution, Valley Road/Westerfield Road Roundabout Improvements Contribution, Pedestrian and Cycle Railway Bridge Maintenance Payment

and each in the singular or (if the context so permits as to part shall be treated as a **"Contribution"**;

**"Contributions Contract"** means a contract which the Borough Council or the County Council (as relevant) has entered into before the Relevant BC Contribution Date, the Relevant CC Contribution Date or Relevant Underspend Date requiring another party to provide works, services or supplies (or any combination of them) and which the Borough Council or the County Council (as relevant) has entered into because the funding for it has been provided in accordance with this Deed;

**"Contributions Monitoring Report"** means a report prepared by the County Council detailing the County Council Contributions that have fallen due, whether the County Council Contribution has been paid or not by the Owner, and whether the County Council has expended the County Council Contributions for the Purposes set out in this Deed and, if so, to what extent;

**"Contribution Reallocation Mechanism"** means the reallocation of any BC and/or SCC Contribution Underspend in accordance with the provisions of clause 9.2;

**"Costs"** means the total of all of the costs incurred by the Owner in connection with the Development the types of which are shown in the Viability Review Template and which include the actual capital costs associated with compliance with this Deed and compliance with any planning conditions imposed on the Planning Permission or Reserved Matters Approvals associated with the Development;

**"County Council Contributions"** means those Contributions payable by the Owner to the County Council;

**"Country Park"** means that area of land of 30.5 (thirty point five) ha shown shaded green on Figure 3 of the Ipswich Garden Suburb SPD;

**"Country Park Commuted Sum"** means the sum of £548,000 (five hundred and forty eight thousand pounds) Index Linked toward the management and maintenance of the Country Park;

**"Country Park HIF Repayment"** means:

- (a) any and all of the CP IDF Allocation required to be repaid to Homes England pursuant to the GDA; and
- (b) any interest levied on any monies required by Homes England to be repaid as may be levied pursuant to the GDA; and
- (c) any costs levied by Homes England and/or the Borough Council in connection with such repayment pursuant paragraphs 7.4 and/or 8 of Schedule 2 to the GDA and/or the Crest Back to Back Agreement;

**"CP HIF Allocation"** means the sum of £4,225,000 (four million two hundred and twenty five thousand pounds) the total amount of the IDF allocation identified for use in payment of the Development Costs of the Country Park PROVIDED THAT such sum shall be reduced to reflect any withdrawal of all or any part of this sum by Homes England pursuant to the GDA;

**"CP Phase Account"** means written statements prepared by the Northern Land Owner in respect of each of the Country Park Phase Works setting out all Development Costs actually

incurred in connection with that phase (including such invoices tender receipts or otherwise that set out costs incurred) and which shall identify any and all CP HIF Allocation in relation to the Country Park Phase Works to which the respective CP Phase Account relates received by the Northern Land Owner which has not been required to be repaid by Homes England and/or the Borough Council and which shall set out the CP Withdrawal Costs relating to the specific Country Park Phase Works;

**"CP Withdrawal Costs"** means the sum of the Development Costs actually incurred associated with the design, delivery construction and short-term maintenance (up to a maximum of £330,000 (three hundred and thirty thousand pounds) only in respect of any maintenance of the Country Park Phase Works) of the respective Country Park Phase Works to which the CP Phase Account within which the CP Withdrawal Costs are specified (including such invoices tender receipts or otherwise that set out costs incurred) and excluding any and all CP HIF Allocation in relation to the Country Park Phase Works to which the respective CP Phase Account relates received by the Northern Land Owner which has not been required to be repaid by Homes England and/or the Borough Council such CP Withdrawal Costs as agreed or determined in accordance with paragraph 2 of Part 2 of Schedule 6 of the Northern Land Obligation;

**"Country Park Indicative Programme"** means the indicative phasing for the delivery of the Country Park as annexed to this Deed at Appendix 2;

**"Country Park Phase Works"** means any one of the Country Park Phase 1 to 7 Works which shall (in aggregate) comprise works across the whole of the Country Park;

**"Country Park Phase 1 Works"** means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 1" and to be carried out by the Northern Land Owner in accordance with the Northern Land Obligation(s);

**"Country Park Phase 2 Works"** means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 2" and to be carried out by the Northern Land Owner in accordance with the Northern Land Obligation(s);

**"Country Park Phase 3 Works"** means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 3" and to be carried out by the Northern Land Owner in accordance with the Northern Land Obligation(s);

**"Country Park Phase 4 Works"** means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 4" and to be carried out by the Northern Land Owner in accordance with the Northern Land Obligation(s);

**"Country Park Phase 5 Works"** means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 5" and to be carried out by the Northern Land Owner in accordance with the Northern Land Obligation(s);

**"Country Park Phase 6 Works"** means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 6" and to be carried out by the Northern Land Owner in accordance with the Northern Land Obligation(s);

**"Country Park Phase 7 Works"** means those works listed on the Country Park Indicative Programme (specifically the delivery of the Visitor Centre and all associated infrastructure including car parking and a DEAP and any associated landscaping) under the heading "Phase 7" and to be carried out by the Northern Land Owner in accordance with the Northern Land Obligation(s);

**"Crest Back to Back Agreement"** means an agreement on or about the date hereof entered into by Crest Nicholson Operations Limited and the Borough Council pursuant to which the Borough Council agreed to make the filF Funding it receives under the GDA available to Crest Nicholson Operations Limited in consideration for the carrying out of the HIF Funded Infrastructure Works;

**"Deferred Affordable Housing"** means the Deferred Affordable Housing Units or the Deferred Affordable Housing Contribution;

**"Deferred Affordable Housing Contribution"** means any financial contribution for the provision of off-Site Affordable Housing the precise value of which will be calculated in accordance with paragraph 5 of Part 2 of Schedule 2

**"Deferred Affordable Housing Scheme"** a scheme specifying the quantum, size, mix, tenure, timetable for delivery and location of the Deferred Affordable Housing Units across the remaining parts of the Development being 815 (eight hundred and fifteen) Residential Units in connection with any Early Viability Assessment submitted pursuant to paragraph 1.1 of Part 2 of Schedule 2 and 359 (three hundred and fifty nine) Residential Units in connection with any Viability Assessment submitted pursuant to paragraph 1.2 of Part 2 of Schedule 2 with reference to plans and drawings approved as part of the Application, which:-

is submitted by the Owner as part of an Early Viability Assessment or Viability Assessment 1 and

is either:-

- (a) agreed by the Borough Council and the Owner; or
- (b) determined by the Expert;

**"Deferred Affordable Housing Units"** means any Affordable Housing Units to be provided as part of the Development including the baseline 4% of all Residential Units to be provided as Affordable Housing Units pursuant to paragraph 3.1 of Part 1 of Schedule 2 of this Deed up to an overall maximum of 35% (thirty five per cent) of the Residential Units within the Development being required as a result of any Viability Review undertaken in accordance with Part 2 of Schedule 2 (subject at all times to the provisions contained within paragraphs 5 and 6 of Part 2 of Schedule 2) and secured in accordance with any Deferred Affordable Housing Scheme;

**"Deferred Contributions"** means the Deferred Affordable Housing Contribution, the Deferred Swimming Facilities Contribution and/or the Deferred Waste Facilities Contribution;

**"Deferred Swimming Facilities Contribution"** means any financial contribution for the provision of Swimming Facilities (up to a maximum of £282,009 (two hundred and eighty two thousand and nine pounds) (Index Linked)) the precise value of which will be calculated in accordance with paragraph 5 of Part 2 of Schedule 2;

**"Deferred Waste Facilities Contribution"** means any financial contribution for the provision of Waste Facilities (up to a maximum of £70,677 (seventy thousand six hundred and seventy seven pounds) Index Linked) the precise value of which will be calculated in accordance with paragraph 5 of Part 2 of Schedule 2;

**"Development"** means the mixed use development to be provided on the Site comprising up to 815 (eight hundred and fifteen) dwellings (C3); a district centre (with up to 6040 sqm of floor space in the following use classes: A1 retail (not exceeding 4,540 sqm), financial services (A2), restaurants, pubs and takeaways (A3, A4, AS), business uses (B1a), dwellings and institutional residential uses (C2,C3) and non-residential institutions (including health centre (DI) and leisure uses (D2)); a primary school (DI); vehicular access from Westerfield Road (x2) and Henley Road (cycle, pedestrian, emergency vehicle, temporary bus route only); provision of public amenity space; provision of infrastructure (including highways , parking, cycle, pedestrian routes, utilities and sustainable drainage systems); landscaping and engineering works (including ground remodelling and enabling works). works proposed will affect Tree Preservation Orders and public right of ways within the Site;

**"Development Costs"** means the costs for the design, remediation, demolition, site investigation, ecological works, construction of the HIF Funded Infrastructure Works, tender costs, landscaping and incidental works and all ancillary costs including payments or contributions under any Planning Agreement, the cost of bonds, deposits or other security to secure the provision of the works, the Pedestrian and Cycle Railway Bridge Commuted Sum (as defined in the Northern Land Obligation), the Vehicular Railway Bridge Commuted Sum (as defined in the N01them Land Obligation) (and for the avoidance of doubt shall not include the Country Park Commuted Sum (as defined in the Northern Land Obligation)) costs of maintenance cleansing and remedial works in relation to the relevant infrastructure pending adoption by the appropriate authority and all professional fees and expenses which have been or will be reasonably and properly incurred by the Northern Land Owner (or a contractor, developer and/or site owner) in carrying out the relevant HIF Funded Infrastructure Works, such costs must constitute capital expenditure in accordance with Regulations made under the Local Government Act 2003;

**"Disposal"** means a transfer, disposal or grant of any legal or equitable interest in or over the Site or part thereof (other than (in relation to any land assets) by way of grant of a legal charge or the grant of a licence not creating exclusive possession terminable on 3 months' notice or less) including by way of lease;

**"District Centre"** means an area of serviced land shown shaded orange and marked NC1 and NC2 on the Development Framework Plan reference CG1003-0 PA-003 Rev B including the Community Space;

**"Early Viability Assessment"** means an open book assessment prepared by or on behalf of the Owner and submitted to the Borough Council pursuant to paragraph 1.1 of Schedule 2 Part 2 and which shall assess the viability of the Development as a whole and which shall not (unless otherwise agreed by the Borough Council) have any regard to the Viability Review Template and/or Viability Review Explanatory User Guide and any assumptions contained within those documents and shall for all purposes be a reassessment of the viability of the Development as at the date it is undertaken;

**"Early Viability Review Date"** means (subject to paragraph 1 of Part 1 of Schedule 2) two years from the date of receipt of a detailed planning permission for the construction of the whole or part of the first residential Phase of Development (which for the avoidance of doubt shall include all relevant reserved matters for the whole or part of that Phase);

**"Early Viability Surplus"** means the sum agreed or determined as part of an Early Viability Review Assessment in accordance with the relevant provisions of Part 2 of Schedule 2 100% (one hundred per cent) of which shall be applied to Deferred Affordable Housing Units and/or Deferred Contributions and/or recovery of HIF Funding;

**"Early Years Contribution"** means the sum of £590,680 (five hundred and ninety thousand, six hundred and eighty pounds) Index Linked;

**"Early Years Setting"** means a 55 (fifty five) place early years setting to be constructed whether or not by the County Council to be co-located with the Primary School on the Primary School Site;

**"Eligible Households"** means a person or persons in need of accommodation who are unable to rent or buy on the local open market determined in accordance with the Borough Council's housing allocation policy or as otherwise approved by the Borough Council or by mutual exchange in accordance with section 158 of the 2011 Act;

**"End Date"** means the date specified in Schedule 14 by which the Borough Council may exercise any Clawback provision;

**"Environmental Statement"** means the environmental statement submitted with the Application and dated July 2014 together with addendums dated December 2016 and March 2017;

**"Expert"** means such expert as may from time to time be appointed for the purposes of resolving a relevant dispute as follows or as otherwise agreed between the parties:

- (a) save as paragraph (b) below requires if the dispute relates to transport or highway works, engineering, demolition or construction works, a chartered civil engineer being a member of the Institution of Civil Engineers (having not less than 10 years' relevant experience in the public or private sector) agreed by the parties to the dispute but in default of agreement appointed at the request of any of the parties by or on behalf of the President of the Institution of Civil Engineers;
- (b) if the dispute relates to any building within the Development, or other property or similar matters, a chartered surveyor (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President of the Royal Institute of Chartered Surveyors;
- (c) if the dispute relates to bus operational matters, a chartered transport planner being a member of TPS, CII-IT, ICE or RTPI (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the Chairman of the Transport Planning Society;
- (d) if the dispute relates to the viability of the Development of the Site specifically whether a Surplus has arisen, or the value of the Surplus, or the proposed use of the Surplus and the associated viability connected with a Deferred Affordable Housing Scheme, or in any other way relates to the viability of the Affordable Housing to be provided on the Site, such dispute shall upon the dispute arising be referred to an independent and fit person of at least ten years professional experience of the matter in issue holding appropriate professional qualifications to be appointed by the President of the Royal Institution of Chartered Surveyors unless the parties have previously agreed the identity of the expert to be appointed;
- (e) if the dispute relates to financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant, a chartered accountant

(having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President of the Institute of Chartered Accountants in England and Wales;

- (f) if the parties to the dispute shall fail to agree upon the nature or difference in question then it should be referred to a solicitor or barrister of a least 15 years' standing agreed by the parties but in default of agreement appointed at the request of either party by or on behalf of the President of the Law Society;

**"Final Account"** means a written statement prepared by the Northern Land Owner setting out all Development Costs actually incurred in connection with the Pedestrian and Cycle Railway Bridge and the Vehicular Railway Bridge (including such invoices tender receipts or otherwise that set out costs incurred) and which shall attribute such costs to each of the said bridges and confirm if there has been a P&C Shortfall and/or Vehicular Surplus and a P&C Overspend;

**"Final Disposal"** means the abandonment, loss or final disposal of a Challenge and the expiry of any time period within which an appeal against such loss or final disposal must be made where no such appeal has been applied for;

**"Final Withdrawal Account"** means a written statement prepared by the Northern Land Owner setting out all Development Costs actually incurred in connection with the Pedestrian and Cycle Railway Bridge (including such invoices tender receipts or otherwise that set out costs incurred) and which shall identify any HIF P&C Allocation received by the Northern Land Owner which has not been required to be repaid by Homes England and/or the Borough Council and which shall set out the P&C Withdrawal Costs;

**"Financial Information"** means such information as reasonably requested by the Borough Council which identifies the actual costs incurred (if any) in delivering and/or funding all or part of the Valley Road/Westerfield Road Roundabout Improvements;

**"Foul/Surface Water Drainage and Sewerage"** means the sewers and drains to be constructed or completed within the Site pursuant to the Planning Permission or such sewers and drains that may already exist at the time the planning permission is granted;

**"FP18"** means the existing public footpath known as Footpath 18;

**"Full Travel Plan"** means a fully developed travel plan based on the Interim Travel Plan and travel monitoring data of the end users providing a package of measures aimed at promoting more sustainable travel choices and reducing reliance on the private car in relation to the Development;

**"Fully Serviced"** means in relation to the Community Space it has proper connections within its boundary so as to connect it to the SuDs facilities and to mains foul drainage water gas electricity and telecommunications (or any such other service that may be agreed between the parties) and enjoys direct access to public highway or a roadway constructed to adoptable standards (connecting to the public highway);

**"Gateway to Home Choice Regional CBL"** means the choice based lettings system where Affordable Rented Units are advertised and Eligible Households are able to express their interest and choice for the properties they would like to live in;

**"GDA"** means the grant funding agreement entered into by Homes England and the Borough Council on 2 October 2019 pursuant to which Homes England agreed to make the HIF Funding available to the Local Authority on the terms of the GDA.

**"Green Infrastructure"** means those areas of greenspace to be provided within the Development shown indicatively on Plan CG1003 OPA 003 and to be approved pursuant to the Planning Permission;

**"Habitats Regulations"** means the Conservation of Species and Habitats Regulations 2017;

**"Habitats Regulations Assessment Monitoring Contribution"** means the sum of £7,500 (seven thousand five hundred pounds) Index Linked toward the funding of off-site conservation measures including monitoring of visitor disturbance to the Special Protection Area and RAMSAR site at Orwell Park/Piper's Valley;

**"Health Care Facilities Contribution"** means the sum of £318,453.26 (three hundred and eighteen thousand four hundred and fifty three pounds and twenty six pence) Index Linked toward the funding of Health Care Facilities;

**"Health Care Facilities"** means a health care centre and/or ancillary or support health care facilities to be provided within the Site or within the vicinity of the Site of for the provision of health care;

**"Homes England"** means the organisation empowered to regulate registered providers of Affordable Housing under the Housing and Regeneration Act 2008 or any successor body having functions currently exercised by the Homes and Communities Agency (trading as Homes England);

**"Housing Infrastructure Funding (HIF Funding)"** means the government's capital grant programme details of which were published on 4 July 2017 with confirmation of the Borough Council's successful bid announced on 1 February 2018;

**"HIF Funded Infrastructure Works"** means the works to:

- (a) Design, deliver, construct and to short-term maintain the Country Park Phase Works (such maintenance works to attribute no more than £330,000 (three hundred and thirty three thousand pounds) of the CP HIF Allocation) and secure the transfer of the Country Park to the Borough Council (excluding legal and/or professional or statutory fees to effect such transfer) ;
- (b) Design deliver, construct, maintain and secure the adoption of the Pedestrian and Cycle Railway Bridge and the Vehicular Railway Bridge by the County Council

in support of the delivery of new homes in the Ipswich Garden Suburb;

**"HIF P&C Allocation"** means the sum of £1,310,063 (one million three hundred and ten thousand and sixty three pounds) being the total amount of the HIF P&C Allocation identified to pay for the Development Costs associated with the Pedestrian and Cycle Railway Bridge PROVIDED THAT such sum shall be reduced to reflect any withdrawal of all or any part of this sum by Homes England pursuant to the GDA;

**"HIF Repayment"** means:



- (a) any and all of the HIF P&C Allocation required to be repaid to Homes England pursuant to the GDA;
- (b) any interest levied on any monies required by Homes England to be repaid as may be levied pursuant to the GDA; and
- (c) any costs levied by Homes England and/or the Borough Council in connection with such repayment pursuant paragraphs 7.4 and/or 8 of Schedule 2 to the GDA and/or the Crest Back to Back Agreement;

**"HIF Vehicular Allocation"** means the sum of £4,333,288 (four million three hundred and thirty three thousand two hundred and eighty eight pounds) being the total amount of the HIF allocation identified to pay for the Development Costs associated with the Vehicular Railway Bridge PROVIDED THAT such sum shall be reduced to reflect any withdrawal of all or any part of this sum by Homes England pursuant to the GDA;

**"IGS Area"** means any or all of the following as the context may require and as shown on the plan entitled IGS Area Proportions Plan in Appendix 1:

<b>IGS Area</b>
Crest (Area N2a and N2b)
CBRE (Area N1a)
Mersea (Area N3a)
Ipswich School (Area N1b)
Red House (Area N3b)

**"IGS Area Proportion"** means in relation to each of the areas shown on the plan entitled IGS Area Proportions Plan on Appendix 1 based on the estimated dwelling numbers:

<b>IGS Area</b>	<b>%</b>	<b>CP Cap (based on £4,225,000)</b>
Crest (Area N2a and N2b)	33.3	1,406,925
CBRE (Area N1a)	23.3	984,425
Mersea (Area N3a)	31.4	1,326,650
Ipswich School (Area N1 b)	9	380,250
Red House (Area N3b)	3	126,750
	100	4,225,000

**"IGS Delivery Board Terms of Reference (ToR)"** means the terms of reference for the IGS Delivery Board set out in Appendix 8 to this Deed;

**"Index"** means the RPI Indexation in respect of the Community Development Contribution, the Police Services Contribution, the Air Quality Monitoring Contribution, the Habitats Regulations Assessment Monitoring Contribution, Travel Plans Implementation Bond, Bus Service Contribution, Country Park Commuted Sum, Monitoring Contribution, Travel Plans Evaluation and Support Contribution and the Library Contribution, the Multi-Use Games Area Contribution and BCIS Indexation for all other Contributions;

**"Index Linked"** means indexation payable by reference to the relevant Index and calculated in accordance with clause 24 of this Deed and the word "indexation" shall be construed accordingly;

**"Infrastructure Delivery Plan (IDP)"** means the infrastructure delivery plan dated 22 February 2017;

**"Interest"** means interest at four per cent above the base lending rate of the Bank of England from time to time;

**"Intermediate Affordable Housing Units"** means Affordable Housing Units (which are not Affordable Rented Units) to be made available to Eligible Households either to buy at a discount of at least 20% of the local open market value or to rent or to rent to buy including but not limited to Intermediate Market Rent, Shared Ownership and Shared Equity or such other intermediate tenures as may be included in the definition of Affordable Housing from time to time and **"Intermediate Affordable Housing"** is to be construed accordingly;

**"Intermediate Market Rent"** means a rent that is set at least 20% (twenty per cent) below market rent;

**"Interim Travel Plan"** means the approved interim Travel Plans dated September 2018 and attached to this Deed at Appendix 4;

**"Ipswich Garden Suburb"** means the area identified in policy CS10 of the Ipswich Borough Council Core Strategy (February 2017) (the **"Core Strategy"**) and the Ipswich Garden Suburb (IGS) SPD;

**"Ipswich Garden Suburb (IGS) Delivery Board"** means a delivery board established as a not for profit organisation to oversee the delivery phases of the Ipswich Garden Suburb and to work towards assisting and facilitating (where possible) a co-ordinated delivery of the Development in accordance with the Core Strategy, IGS IDP, IGS SPD, approved plans, associated planning conditions and this Deed. The purpose and objectives of the Delivery Board will be based upon those set out in the Ipswich Garden Suburb SPD and **"IGS Delivery Board"** shall be construed accordingly;

**"Ipswich Garden Suburb (IGS) SPD"** means the Ipswich Garden Suburb Supplementary Planning Document dated 22 March 2017;

**"Legal Completion"** means completion of a legal transfer of a freehold interest or the completion of the grant of a leasehold interest (as appropriate);

**"Library Contribution"** means the sum of £6,203 (six thousand two hundred and three pounds) Index Linked;

**"Maintenance and Management Schemes"** means the Open Space Maintenance and Management Scheme and the SuDs Maintenance and Management Scheme;

**"Management Company"** means a management company established in accordance with the provisions of Schedule 8 of this Deed to be approved in writing by the Borough Council and which is a private limited company to be established by the Owner or an existing company (registered at Companies House) or other body approved by the Borough Council in accordance with Schedule 8 of this Deed the purpose of which will be (amongst other things) to manage and maintain the common parts of the Development which will include any SUDS not transferred to a statutory drainage authority, any estate roads not adopted by the County Council and all Open Space;

**"Market Value Unit"** means a Residential Unit that is not an Affordable Housing Unit;

**"Material Operation"** means any material operation within the meaning of sections 56(4) of the 1990 Act **PROVIDED THAT** the carrying out of:

- (a) archaeological investigations;
- (b) decontamination works;
- (c) environmental site investigations;
- (d) fencing erected for ecological reasons subject to the prior approval of the Borough Council of the details of such fencing;
- (e) investigation works;
- (f) site reclamation;
- (g) site clearance including earthworks, re-grading and landscape clearance works;
- (h) termination or diversion of existing services;
- (i) provision of temporary construction site accommodation;
- (j) erection of hoardings, temporary enclosures, fences and other security measures;
- (k) provision of temporary haul roads; and
- (l) works and operations to enable any of the foregoing to take place,

shall not constitute a material operation for the purposes of this definition and shall not therefore constitute Commencement of the Development for the purposes of this Deed;

**"Monitoring Contribution"** means the sum of £10,000 (ten thousand pounds) Index Linked to be paid in accordance with the terms at paragraph 2.1 of Schedule 1 to this Deed;

**"Mortgagees"** means together Mortgagee 1, Mortgagee 2 and Mortgagee 3;

**"Multi-Use Games Area Contribution"** means the sum of £300,000 (three hundred thousand pounds) Index Linked to be paid in accordance with the terms of paragraph 1 of Part 6 of Schedule 3 to this Deed;

**"Northern Land"** means the land shown edged red on Drawing no AA5203-2001 Site Location Plan -D (or any part of it) and which is included in a Northern Land Application;

**"Northern Land Application(s)"** means any of the following:

- (a) the planning applications under the Borough Council's application reference 16/00608/OUT and with East Suffolk Council's reference number 16/2592/OUT: for the development of the Northern Land; or
- (b) any planning application that is a major application i.e. for development of more than 10 dwelling houses that may be submitted within a period of 15 years from the date of this Deed in relation to the Northern Land;

**"Northern Land Development"** means any development of the Northern Land pursuant to a planning permission granted for the Northern Land Application(s);

**"Northern Land Obligation"** means the planning obligation entered into in connection with the Northern Land Application (and any modification or variations thereto together with any other planning obligation entered into in respect of the Northern Land Development); in accordance with section 106 of the 1990 Act; in compliance with regulation 122 of the CIL Regulations; and made between the Northern Land Owner and the Borough Council and/or the County Council of even date;

**"Northern Land Owner"** means the owner(s) and/or developers of the Northern Land as at the date any obligations in this Deed (and relating to the Northern Land) are capable of being enforced;

**"Northern Temporary Pedestrian Footpath Land"** means the land on which the provision of the Temporary Diversion Route may be located on the Northern Land (such route is shown illustratively on the Temporary Diversion Strategy Drawing by pink dashed lines and blue dashed lines);

**"Northern Land Valley Road/Westfield Road Roundabout Improvements Contribution(s)"** means the sum or sums to be paid to the Borough Council by the Northern Land Owner under any Northern Land Obligation which shall in aggregate amount to £1,113,188 (one million one hundred and thirteen thousand one hundred and eighty eight pounds) towards the associated costs of the Valley Road/Westfield Road Roundabout Improvements (or in relation to any balance not used in delivering those improvements, to be applied to off-site Affordable Housing);

**"Occupation"** means the first use or occupation of the Residential Units for the purposes permitted by the Planning Permission save for temporary occupation for the purposes of construction or fitting out or commissioning or marketing or site security and **"Occupy"**, **"Occupying"**, **"Occupiers"**, **"Occupied"** and cognate expressions shall be construed accordingly;

**"Off Site Traffic Management Mitigation Contribution"** means the sum of £81,523.18 (eighty one thousand, five hundred and twenty three pounds and eighteen pence) Index Linked

**"Off Site Sustainable Transport Contribution"** means the sum of £203,807.94 (two hundred and three thousand eight hundred and seven pounds and ninety four pence) Index Linked;

**"Off Site Sustainable Transport Measures"** means the improvements to the identified routes as set out in the Ipswich Garden Suburb - Off-Site Pedestrian and Cycle Improvements document at Appendix IO;

**"On Site"** means on land within the Site;

**"Open Market Rent"** means the rent calculated in accordance with the definition of "Market Rent" at Practice Statement 3.4 of the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards (6th Edition) or such amended definition as may replace it from time to time;

**"Open Space"** means each area of public open space and Green Infrastructure within the Development including play equipment to be laid out in accordance with the Planning Permission;

**"Open Space Maintenance and Management Scheme"** means a written scheme for the on-going management and maintenance of the Green Infrastructure and Open Space (to be approved as part of the details submitted pursuant to condition 2l(vi)(g) of the Planning Permission) and which shall include but not be limited to the following:

- (a) frequency of maintenance;
- (b) measures to replace any trees, shrubs, hedgerows or turf which may die or become diseased;
- (c) maintenance and repair of play equipment;
- (d) standard of maintenance and repair to be achieved and maintained; and
- (e) how the costs of the maintenance shall be funded and for the avoidance of doubt this shall include:
- (f) a mechanism to ring fence a sufficient amount of funds paid to the Management Company pursuant to or received from future owners of the Residential Units for use solely in relation to the management and maintenance of the Green Infrastructure and Open Space (including play equipment);

**"Open Space Transfer"** means the transfer to the Management Company of the unencumbered freehold interest in the Open Space PROVIDED THAT such transfer shall:

- (a) be unencumbered;
- (b) be free from contamination which would prevent the use of the Open Space as open space;
- (c) be following all necessary archaeological surveys having been completed;
- (d) be free of any services and/or service media in, on or under the Open Space save for those services required to be provided in accordance with Schedule 5 and such other services and service media as may be agreed between the parties to the transfer;
- (e) not include any terms which would restrict public access save for the purposes of maintenance works or in the case of emergency;

- (f) not include any terms which would directly or indirectly affect the construction, servicing or occupation of the part of the Site that is to be retained by the Owner;
- (g) include any reasonable reservation of rights of access and services over the Open Space for the purpose of laying, managing, maintaining, replacing, renewing, cleaning and repairing services including but not limited to sustainable urban drainage measures, water, gas, sewerage, drainage or electricity (as applicable);
- (h) include for the benefit of the Open Space the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the Open Space over any adjoining land for its intended purposes as set out in Schedule 5;
- (i) be at nil consideration;
- (G) include a covenant that the Open Space shall not be used for any purpose other than for public open space including but not limited to community/public events; and
- (k) include a covenant that the Owner shall bear the reasonable legal and professional costs of the Management Company and any SDLT liability resulting from the transfer;

**"Owner's Country Park HIF Repayment Contribution"** means the aggregate of a) b) and c):

- (a) the relevant proportion (being 23.3% of the CP HIF Allocation required to be repaid to Homes England pursuant to the GDA subject to a cap of £984,425 (nine hundred and eighty four thousand four hundred and twenty five pounds) plus
- (b) any interest levied on any monies required by Homes England to be repaid as may be levied pursuant to the GDA PROVIDED THAT any interest which is claimed in relation to the repayment of any part of the CP HIF Allocation shall be proportionate to the relevant IGS Area in the percentages specified in the definition of IGS Area Proportions; and
- (c) any costs levied by Homes England and/or the Borough Council in connection with such repayment pursuant to paragraphs 7.4 and/or 8 of Schedule 2 to the GDA and/or the Crest Back to Back Agreement PROVIDED THAT any costs which are claimed in relation to the repayment of any part of the CP HIF Allocation shall be proportionate to the IGS Areas in the percentages specified in the definition of IGS Area Proportion;

and where Development has not begun for the purposes of section 56 of the 1990 Act at the date an Owner's Country Park HIF Repayment Contribution falls due to be paid pursuant to the GDA then the Owner's Country Park HIF Repayment Contribution shall be deemed to be increased by Indexation from the date that the Owner's Country Park HIF Repayment falls due to be paid pursuant to the GDA until the date of receipt by the Borough Council of the Owner's Country Park HIF Repayment Contribution;

**"Owner's Country Park Withdrawal Payment"** means the relevant proportion (being 23.3% (twenty three point three per cent) of the CP HIF Allocation subject to an overall aggregate cap for any and all Owner's Country Park Withdrawal Payments for all Country

Park Phase Works of £984,425 (nine hundred and eighty four thousand four hundred and twenty five pounds) plus Indexation from the date the respective CP Phase Account is submitted to the Borough Council until the date of receipt by the Borough Council of the relevant Owner's Country Park Withdrawal Payment in relation to the relevant Country Park Phase Works to which the respective CP Phase Account relates;

**"Owner's HIF P&C Overspend Contribution"** means 42.6% of the P&C Overspend up to a maximum of the sum of £275,124 (two hundred and seventy five thousand one hundred and twenty four pounds) plus Indexation from the date that the P&C Shortfall and Vehicular Surplus are both agreed pursuant to paragraph 2 of Part 2 of Schedule 4 (or determined pursuant to clause 15) of the Northern Land Obligation until the date of receipt by the Borough Council;

**"Owner's HIF Repayment Contribution"** means the amount of HIF (or any part of it) required by Homes England to be paid for any reason pursuant to paragraphs 7.4 and/or 8 of the GDA and payable by the Owner based on the combined total of the following calculation :

- (a) the Owner's Country Park HIF Repayment Contribution; and
- (b) the Owner's P&C HIF Repayment Contribution

it being acknowledged that Homes England may seek repayment of a lump sum of the HIF rather being specifically proportioned or identified as being related to the CP HIF Allocation or the HIF P&C Allocation or HIF Vehicular Allocation in which case such lump sum shall be proportioned for the purposes of identifying the quantum attributable to each of the three HIF Funded Infrastructure Works based on 13.3% of any repayment being attributed as being the HIF P&C Allocation, 43.9% of any repayment being attributed as being the HIF Vehicular Allocation and 42.8% of any repayment being attributed as being the CP HIF Allocation PROVIDED THAT the caps set out in the definition of the Owner's Country Park HIF Repayment Contribution and the Owner's P&C HIF Repayment Contribution, (which shall be increased by any applicable interest and/or costs referred to in those definitions), shall always apply AND where Development has not begun for the purposes of section 56 of the 1990 Act at the date that the Owner's HIF Repayment Contribution falls due to be paid pursuant to the GDA then the Owner's HIF Repayment Contribution shall be deemed to be Index Linked from the date that the Owner's HIF Repayment Contribution falls due to be paid pursuant to the GDA and the date of receipt by the Borough Council from the Owners of the Owner's HIF Repayment Contribution;

**"Owner's HIF Withdrawal Payment"** means 42.6% of the P&C Withdrawal Costs subject to a cap of £833,211 (eight hundred and thirty three thousand two hundred and eleven pounds) plus Indexation from the date the Final Withdrawal Account is submitted to the Borough Council by the Northern Land Owner pursuant to the Northern Land Obligation until the date of receipt by the Borough Council of the Owner's HIF Withdrawal Payment from the Owner;

**"Owner's P&C HIF Repayment Contribution"** means the combined total of:

- (a) 42.6% of the HIF P&C Allocation required to be repaid to Homes England pursuant to the GDA subject to a cap of £558,087 (five hundred and fifty eight thousand eighty seven pounds); and
- (b) 42.6% of the costs and interest levied as referred to in sub-clauses (b) and (c) in the definition of HIF Repayment;

and where Development has not begun for the purposes of section 56 of the 1990 Act at the date the Owner's HIF Repayment Contribution falls due to be paid pursuant to the GDA then the Owner's HIF Repayment Contribution shall be deemed to be increased by Indexation from the date that the Owner's HIF Repayment Contribution falls due to be paid pursuant to the GDA until the date of receipt by the Borough Council of the Owner's HIF Repayment Contribution;

**"Parcel"** shall mean each area of the Site which includes Affordable Housing Units and is to be defined by a Reserved Matters Application;

**"Part 2 Certificate"** means the part 2 certificate issued from the County Council's director of resource management pursuant to a Section 38 Agreement;

**"Parties"** means the parties to this Deed and **"Party"** shall be construed accordingly;

**"Pedestrian and Cycle Railway Bridge"** means the pedestrian and cycle bridge over the Ipswich to Felixstowe Line railway line (East Suffolk Line) in the indicative location as shown on Drawing VD19I07-SKI01 Rev B at Appendix I;

**"Pedestrian and Cycle Railway Bridge Works"** means the works to deliver the Pedestrian and Cycle Railway Bridge;

**"Pedestrian and Cycle Railway Bridge Escrow Account"** means a specific interest bearing and instant access deposit account (that will have its own specific reference code to ensure that it remains separate from any other capital/revenue expenditure that the County Council undertakes) to be held by the County Council and into which the Pedestrian and Cycle Railway Bridge Maintenance Payment shall be deposited and which:

- (a) is to be used for the sole purpose of meeting the costs of the ongoing maintenance of the Pedestrian and Cycle Railway Bridge prior to adoption of the same by the County Council;
- (b) shall accrue interest at a rate of (0.02%) below base rate (unless a higher rate can be achieved in which case such higher rate will be applied) and will be applied to meet the on-going maintenance prior to adoption of the Pedestrian and Cycle Railway Bridge; and
- (c) may only be closed once all payments, sums and costs have been met and the balance is nil;

**"Pedestrian and Cycle Railway Bridge Maintenance Payment"** means the relevant proportion of the estimated annual maintenance costs of maintaining the Pedestrian and Cycle Bridge from completion until adoption by the County Council being the relevant proportion attributable to the Owner on an annual basis PROVIDED THAT the payments shall be the lesser of:

- (a) £1,500 per annum Indexed; or
- (b) 42.6% of the annual costs incurred by the Northern Land Owner in maintaining and insuring the Pedestrian and Cycle Railway Bridge;

**"Pedestrian and Cycle Railway Bridge Land"** means the land comprised in the Site shown indicatively coloured red on the Bridge Plan and labelled "Pedestrian Bridge" which shall (with the Temporary Accommodation Land) be used for the purpose of the construction



landing support and accommodation of all structures and maintenance of the Pedestrian and Cycle Railway Bridge including siting of compounds, welfare facilities, vehicular parking and material storage; and the location of the Temporary Accommodation Land may be amended with the agreement of the Owner and the Northern Land Owner prior to or during the course of construction of the Development but PROVIDED THAT any such amendments shall not be made if they would prejudice or delay the delivery of the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge and PROVIDED FURTHER THAT any amendment(s) to the location of the Temporary Accommodation Land shall not be made if it would give rise to likely significant environmental effects that have not been assessed within the Environmental Statement;

**"Perpetuity"** means a minimum term of One Hundred and Twenty Five (125) years from the date of first Occupation of an Affordable Housing Unit;

**"Phase or Phases"** means a distinct phase (or part of a phase as proposed within a Reserved Matters Application) of the Development shown for indicative purposes on the Phasing Strategy unless otherwise agreed in writing between the Borough Council and the Owner;

**"Phasing Strategy"** means a strategy for the phasing of the construction of the Development to be submitted to and approved in writing by the Borough Council pursuant to Condition 10 of the Planning Permission;

**"Plan 1"** means the Location Plan reference CG1001-OPA-001/A and marked as Plan 1 attached to this Deed at Appendix 1;

**"Planning Agreement"** means in relation to the Development, this Deed and any other agreement or instrument binding the Site (or any part of it) by way of an enforceable obligation under Section 106 of the Town & Country Planning Act 1990 Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or the Open Space Act 1906 or under any other enactment or local statute having similar force and the expression 'Planning Agreement' shall also include any Works Agreement and shall include any variations or modifications to any Planning Agreement or Works Agreement from time to time agreed with any relevant authority;

**"Planning Permission"** means the planning permission(s), subject to conditions, to be granted pursuant to the Application for the Development;

**"Police Services Contribution"** means the sum of £7,660 (seven thousand six hundred and sixty pounds) Index Linked to be applied towards new police equipment (including but not limited to staff equipment and police vehicles) and the provision of automatic number plate recognition cameras;

**"Practical Completion"** means a stage in the progress of the relevant work when that work or designated portion thereof is sufficiently complete so that, where necessary, a Certificate of Practical Completion is issued and it can be Occupied or used for its intended use and **"Practically Complete"** and other cognate terms shall be construed accordingly;

**"Primary Education Contribution"** means the sum of £3,398,571 (three million, three hundred and ninety eight thousand, five hundred and seventy one pounds) Index Linked;

**"Primary School"** means at least a 1 form entry primary school (210 places) and any associated playing fields to be constructed whether or not by the County Council on the Primary School Site which for the avoidance of doubt may be an academy, free school and/or

an academy free school and which may be used for community uses pursuant to condition 46 of the Planning Permission;

**"Primary School Anticipated Commencement Notice"** means a written notice served by the County Council on the Owner setting out the anticipated date the County Council (or any other academy free school or other academic institution which shall be responsible for the construction of the Primary School) intends to commence construction of the Primary School;

**"Primary School Design Fee"** the sum of £50,000 (fifty thousand pounds) Index Linked;

**"Primary School Programme "** means the indicative programme as identified in Part 1 of Schedule 3 to this Deed or such variation to that programme as may be necessary and agreed as between the Owner and the County Council in the event that the County Council serves the Primary School Anticipated Commencement Notice;

**"Primary School Site"** means the land upon which the Primary School and Early Years Setting is proposed to be constructed as shown indicatively only on drawing number CG1003- OPA-003 Rev B as annexed to this Deed at Appendix 1 conforming to the following:

- (a) a broadly level (max 1:70 slope) site of not less than 2 hectares;
- (b) being undivided with no public footpaths or other rights of way across the site;
- (c) with no restrictions or covenants on the title that would prevent its use for the purpose of providing the Primary School and/or the Early Years Setting, ancillary uses and community use; and
- (d) with access to the primary road through the Development

**"Primary School Site Transfer"** means the transfer for the Primary School Site;

**"Public Rights of Way Contribution"** means the sum of £91, 275.91 (ninety one thousand, two hundred and seventy five pounds and ninety one pence) Index Linked;

**"Purposes"** means the use to which each of the Contributions payable by the Owner specified in this Deed is to be put;

**"P&C Overspend"** means the balance of any P&C Shortfall after deduction of any Vehicular Surplus (if any);

**"P&C Shortfall"** means the extent to which the sum of the Development Costs associated with the design, delivery construction, maintenance and adoption of the Pedestrian and Cycle Railway Bridge as agreed or determined in accordance with paragraph 2 of Part 2 of Schedule 4 of the Northern Land Obligation exceeds the HIF P&C Allocation;

**"P&C Withdrawal Costs"** means the sum of the Development Costs actually incurred associated with the design, delivery construction, maintenance and adoption of the Pedestrian and Cycle Railway Bridge (including such invoices tender receipts or otherwise that set out costs incurred) and excluding any HIF P&C Allocation received by the Northern Land Owner which has not been required to be repaid by Homes England and/or the Borough Council such P&C Withdrawal Costs as agreed or determined in accordance with paragraph 2 of Part 2 of Schedule 4 of the Northern Land Obligation;

**"Rail Infrastructure Contribution"** means the sum of £74,506.05 (seventy four thousand five hundred and six pounds and five pence) Index Linked;

**"Reasonable Endeavours"** means that it is agreed by the parties that the party under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) and the respective party will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may reasonably be expected of a competent commercial party in the context of the Development (or part of the Development) PROVIDED THAT where a Reasonable Endeavours obligation applies to the Borough Council or the County Council, any attempt to fulfil the relevant obligation shall not require the expenditure of sums of money but may include the application of any funding if received (and specifically applicable to the Development) and the engagement of such professional or other advisers as in all the circumstances may reasonably be expected of a competent publicly funded body and in the context of all its/their statutory duties and functions and PROVIDED FURTHER THAT any attempt to fulfil a relevant obligation shall not require the Councils to breach and/or exceed any of their statutory functions, duties and powers or any requirements of any regulatory body in respect of their statutory, regulatory, compliance functions and/or capacities;

**"Relevant Balance"** means in relation to:

- (a) the Viability Assessment submitted (if required) pursuant to paragraph 1.1 of Part 2 of Schedule 2: 815 Residential Units; and
- (b) Viability Assessment 1 submitted pursuant to paragraph 1.2 of Part 2 of Schedule 2: 359 (three hundred and fifty nine) Residential Units; and
- (c) Viability Assessment 2 submitted pursuant to paragraph 1.6 of Part 2 of Schedule 2: 215 (two hundred and fifteen) Residential Units;

**"Relevant BC Contribution Date"** means 10 years after the date of payment of a Borough Council Contribution to the Borough Council or if paid in instalments 10 years from the date each relevant instalment was paid to the Borough Council;

**"Relevant CC Contribution Date"** means either 10 or 15 years after the date of payment of a County Council Contribution to the County Council as set out in the table below or if paid in instalments 10 or 15 years from the date each relevant instalment was paid to the County Council:

<b>Education</b>	<b>Contribution</b>	<b>Relevant Date (years from payment)</b>
	Primary School Design Fee	10
	Primary Education Contribution	10
	Secondary School Design Fee	10
	Secondary Education Contribution	15
	Sixth Form Education Contribution	15
	Early Years Contribution	10
<b>Transport</b>	Bus Service Contribution	10

	Bus Stop Improvements Contribution	10
	Off Site Sustainable Transport Contribution	10
	Public Rights of Way Contribution	10
	Traffic Management Contribution	10
	Travel Plan Evaluation and Support Contribution	10
	Westerfield Station Improvements Contribution	10
<b>Library</b>	Library Contribution	10
<b>Waste</b>	Defended Waste Facilities Contribution	10

**"Relevant Underspend Date"** means 5 years after the later of the following dates:

- (a) the Borough Council first becomes aware of a BC Contribution Underspend; or
- (b) the County Council has transferred to the Borough Council any monies representing a SCC Contribution Underspend;

**"Reserved Matters Application"** means an application submitted to the Borough Council for approval of reserved matters in accordance with the Planning Permission and **"Reserved Matters"** and **"Reserved Matters Approval"** shall be construed accordingly;

**"Residential Development"** that part of the Development comprising of: up to 815 (eight hundred and fifteen) dwellings (C3);

**"Resident Travel Pack"** means a travel pack provided to each Residential Unit that includes information on how to redeem from the Travel Plan Coordinator two travel vouchers up to the total value of £50 (fifty pounds) per Residential Unit (or a rail or cycle voucher of equivalent value per Residential Unit), current public transport information for bus and rail services, provision of maps of pedestrian and cycle routes, car sharing information, personalised travel plans and information to promote the benefits of sustainable travel in the local area to encourage sustainable travel;

**"Residential Unit"** means any dwelling constructed on the Site pursuant to the Planning Permission and the term **"Unit"** shall be construed accordingly;

**"Residual Contribution Sum"** means individually or collectively the amount of monies available to the Borough Council by virtue of a BC and/or SCC Contribution Underspend;

**"Revenues"** means the total of all of the revenues secured by the Owner from the Development the types of which are shown in the Viability Review Template and which include actual sales/letting capital values for all Residential Units for which a disposal has

been made, or where it has not, an estimate of such values as is made by the Owner based on previous disposals;

**"RPI Indexation"** means indexation by reference to the All Items Index of Retail Prices issued by the Office for National Statistics or any successor to that index from time to time or (if there is no successor) such other appropriate index agreed between the Parties;

**"SCC Contribution Underspend"** means where the Purpose of a County Council Contribution(s) has/have either (a) been achieved at a cost lower than the Contribution paid, or (b) the obligation to achieve the Purpose no longer applies in accordance with any relevant provisions of this Deed;

**"Secondary Education Contribution"** means the sum of £2,748,386.08 (two million seven hundred and forty eight thousand, three hundred and eighty six pounds and eight pence) Index Linked ;

**"Secondary School"** means a new school providing secondary education facilities serving the Development to be located within the Ipswich Garden Suburb or provision of secondary school places in accordance with paragraph 17 of Schedule 16;

**"Secondary School Design Fee"** means the sum of £50,000 (fifty thousand pounds) Index Linked towards the costs of designing secondary education facilities for the Development;

**"Section 38 Agreement"** means an agreement entered into with the County Council and any other relevant party pursuant to section 38 of the 1980 Act and all other relevant powers;

**"Shared Equity"** means an Intermediate Affordable Housing product that has a minimum 20% discount to open market value;

**"Shared Ownership Unit"** means any Affordable Housing Unit occupied partly for rent and partly by way of owner occupation on shared ownership arrangements as defined in section 70(4) of the Housing and Regeneration Act 2008 where the lessee for the time being has the right to acquire 100% of the equity from the Affordable Housing Provider over time and **"Shared Ownership"** shall be construed accordingly;

**"Site"** means the land known as Land West of Westerfield Road, North of Valley Road and South of the Ipswich to Felixstowe railway line included in the Application as shown edged red on Plan 1;

**"Sixth Form Education Contribution"** means the sum of £648,968.20 (six hundred and forty eight thousand nine hundred and sixty eight pounds and twenty pence) Index Linked;

**"Social Homebuy"** means a scheme that allows Affordable Housing Providers to sell rented social housing homes to the tenants of those homes;

**"Specific Contribution Account"** means a specific internal Borough Council or County Council account into which the Borough Council or the County Council will pay a single Contribution which shall attract interest at the Bank of England's base rate;

**"Staircasing"** means the purchase by the owners of additional equity in a Shared Ownership Unit or Shared Equity unit;

**"SUDs"** means a sustainable urban drainage system and all associated works serving the Development approved pursuant to condition 13 of the Planning Permission;

**"SuDS Land"** means that part of the Site on which the SuDS shall be situated;

**"SuDS Maintenance and Management Scheme"** means a written scheme as submitted and approved for the on-going management and maintenance of the SuDS (to be approved as part of the details submitted pursuant to conditions 13 and 22 of the Planning Permission) and which shall include the following:

- (a) frequency of maintenance;
- (b) standard of maintenance and repair to be achieved and maintained; and
- (c) how the costs of the maintenance shall be funded;

**"SuDS Transfer"** means the transfer to the Management Company or statutory drainage authority of the unencumbered freehold interest in the SuDS PROVIDED THAT such transfer shall provide that the SuDS Land shall:

- (a) be free from contamination which would prevent the use of the SuDS for water attenuation and surface water drainage purposes associated with the Development;
- (b) be following all necessary archaeological surveys having been completed;
- (c) be free of any services and/or services media other than SuDS (unless otherwise agreed between the parties and save where such services and/or services media located in under or over the SuDS Land have been approved pursuant to any planning condition then it shall be deemed agreement between the parties has been given for such services and/or service media);
- (d) not include any terms which would directly or indirectly affect the construction, servicing or occupation of the part of the Site that is to be retained by the Owners;
- (e) include for the benefit of the SuDS the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the SuDS over any adjoining land for its intended purposes as set out in Schedule;
- (f) be for a consideration of no more than £1 (one pound); and
- (g) include a covenant that the SuDS shall not be used for any purpose other than for water attenuation and surface water drainage purposes associated with the Development;

**"Surplus"** means (save for the Early Viability Surplus) the sum agreed or determined as part of a Viability Review of Viability Assessment 1 and/or Viability Assessment 2 carried out in accordance with the Viability Review Template and the relevant provisions of Schedule 2 Part 2;

**"Swimming Facilities"** means new and existing swimming facilities in the Borough;

**"Temporary Accommodation Land"** means any land comprised in the Site reasonably and properly temporarily required for the purposes of carrying out the works to construct and maintain the Vehicular Railway Bridge and the Pedestrian and Cycle Railway Bridge which includes land required for compounds, welfare facilities, vehicular parking and material storage in the approximate locations shown indicatively hatched blue on the Bridge Plan and which shall include appropriate construction access corridors shown indicatively for each

bridge on the Bridge Plan and the location of the Temporary Accommodation Land may be amended with the agreement of the Owner and the Northern Land Owner prior to or during the course of construction of Development PROVIDED THAT any such amendments shall not be made if they would prejudice or delay the delivery of the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge and PROVIDED FURTHER THAT any such amendments to the location of the Temporary Accommodation Land shall not be made if they would give rise to likely significant effects not assessed in the Environmental Statement;

**"Temporary Diversion Framework"** means the temporary diversion framework attached to this agreement at Appendix 9 which identifies the principles of the strategy for the temporary diversion of FPI 8;

**"Temporary Diversion Route"** means the temporary diversion route shown indicatively on the Temporary Diversion Strategy Drawing or in relation to the Site the Alternative Diversion Route ;

**"Temporary Diversion Strategy Drawing"** means drawing number VD19107-SK100 Rev B included within the Temporary Diversion Framework;

**"Temporary SANG"** means a technical and detailed design of landscaping and public access routes to be delivered as a temporary alternative to the Country Park Phase Works including but not limited to the provision of a circular walk (of at least 2.7 (two point seven) kilometres shown indicatively at the plan at Appendix 7 to this Deed and shall also include details of public access signage and a binding commitment to make the Temporary SANG available to all those residing in the Development and which explains to those residing in the Development that the Temporary SANG is to be provided on a temporary basis and will be returned to development land in the event that the Country Park is delivered;

**"Temporary SANG Certificate"** means a certificate issued by the Borough Council confirming that the approved Temporary SANG has been Completed and laid out to the Borough Council's reasonable satisfaction;

**"Temporary SANG Management and Maintenance Strategy"** means a written strategy for the overall management and maintenance of the Temporary SANG to include cleaning, lighting, safety, access and security to be approved by the Borough Council in accordance with paragraph 4 of Schedule 6 to this Deed;

**"Traffic Regulation Order"** means any temporary or permanent order required to commence and carry out the construction of the Highway Works pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order;

**"Travel Plan Coordinator"** means the person or company appointed by the Owner to fully implement and monitor the Travel Plans;

**"Travel Plans"** means together the Interim Travel Plan and the Full Travel Plan;

**"Travel Plans Evaluation and Support Contribution"** means the sum of £14,000 (fourteen thousand pounds) Index Linked to be paid in instalments pursuant to paragraph 9 of Schedule 4 to this Deed;

**"Travel Plans Implementation Bond"** means the bond in a form agreed with the County Council and to be entered into by the Owner with a surety approved in writing by the County Council in favour of the County Council in the sum of £50,000 (fifty thousand pounds) such sum being considered by the County Council as the sum required that should the Owner

default in complying with the obligations set out in this Deed in respect of the Resident Travel Pack and the Travel Plans as set out in paragraph 12 to 14 of Schedule 4 the County Council shall call upon the surety to provide such amount of the bond (including the whole) as is required to secure the implementation, carrying out and delivery of the Resident Travel Pack and Travel Plans either itself or through an agent appointed or instructed by the County Council;

**"Travel Plans Implementation Bond Expiry Date"** means one year after the first Occupation of the final Residential Unit;

**"Travel Plan Monitoring Report"** means the annual report that is submitted to the County Council by the Travel Plan Coordinator in a form acceptable to the County Council that provides a summary of the traffic counts and resident surveys to demonstrate that the Full Travel Plan objectives and targets are being achieved;

**"Travel Plan Notice"** means a notice in writing served on the Owner specifying the steps required of the Owner by the County Council in order to implement the framework and full measures and monitoring requirements of the Travel Plans and/or the obligations in this Deed relating to the Travel Plans, Resident Travel Packs;

**"Travel Plan Remedial Measures Notice"** means a notice in writing served on the Owner by the County Council where the Owner has failed to comply with the reasonable requirements of a Travel Plan Notice in respect of the Travel Plans and/or Resident Travel Packs specifying the reasonable steps required of the Owner by the County Council in order to comply with those requirements;

**"TRO Contribution"** means the sum of ten thousand pounds (£10,000) Index Linked payable to the County Council towards the making of a Traffic Regulation Order or Orders limiting or reducing the speed limit along Westerfield Road;

**"Utilities Provider"** means an energy service company, statutory undertaker, services utility company or provider if and to the extent that it shall acquire an interest in the Site for the purpose of providing the supply of electricity, gas, water, heat, power, drainage, telecommunications services or public transport services to or for the benefit of the Development;

**"Validation Date"** means receipt of a valid Viability Assessment pursuant to paragraph 3.3 and 3.4 of Part 2 of Schedule 2;

**"Valley Road/Westerfield Road Roundabout Improvements"** means the design and construction of roundabout improvements at the Westerfield Road junction with Valley Road generally as shown on WSP Drawing no. 4228-SK-10 Revision A at Appendix I;

**"Valley Road/Westerfield Road Roundabout Improvements Contribution"** means the sum of £1,113,188 (one million one hundred and thirteen thousand one hundred and eighty eight pounds) to be paid as appropriate in accordance with paragraph 4 of Part 2 of Schedule 10 toward the associated costs of the Valley Road/Westerfield Road Roundabout Improvements (or in relation to any balance not used in delivering those improvements, to be applied to off-site Affordable Housing);

**"Vehicular Railway Bridge"** means the vehicular railway bridge to be provided over the Ipswich to Felixstowe Line railway (East Suffolk Line) the indicative location of which is shown on Drawing VD19107-SK01 Rev A at Appendix 1;



**"Vehicular Railway Bridge Highway Link"** means the footpath/cycleway link to be constructed on the Site in the location shown indicatively coloured blue on drawing number VDI9107-SK101 Rev A in accordance with the specification shown on such drawing to connect directly the Vehicular Railway Bridge with FP18 and as required by the County Council to facilitate the dedication of the Vehicular Railway Bridge;

**"Vehicular Railway Bridge Land"** means the land comprised in the Site shown indicatively coloured red on the Bridge Plan and labelled "Road Bridge" which shall (with the Temporary Accommodation Land) be used for the purpose of the construction landing support and accommodation of all structures and maintenance of the Vehicular Railway Bridge and permanent vehicular access to the Vehicular Railway Bridge including siting of compounds, welfare facilities, vehicular parking and material storage; and the location of the Temporary Accommodation Land may be amended with the agreement of the Owner and the Northern Land Owner prior to or during the course of construction of the Development but PROVIDED THAT any such amendments shall not be made if they would prejudice or delay the delivery of the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge and PROVIDED FURTHER THAT any amendment(s) to the location of the Temporary Accommodation Land shall not be made if they would give rise to likely significant environmental effects that have not been assessed within the Environmental Statement;

**"Vehicular Railway Bridge Works"** means the works to deliver the Vehicular Railway Bridge;

**"Vehicular Surplus"** means the extent to which the HIF Vehicular Allocation exceeds the sum of the Development Costs of the Vehicular Railway Bridge actually incurred as agreed or determined pursuant to paragraph 2 of Part 2 of Schedule 4 of the Northern Land Obligation;

**"Viability Appraisal Inputs"** means the schedule of variable inputs and sources of information agreed by the Borough Council and the Owner and attached to this Deed at Appendix 6;

**"Viability Assessment"** means an open book assessment prepared by or on behalf of the Owner in connection with the Relevant Balance of the Development which (save for any Early Viability Assessment) has been prepared in accordance with the Viability Review Template and the Parties agree that Viability Assessment 1 and Viability Assessment 2 (but not any Early Viability Assessment) shall only be forward looking and will not seek to clawback under provision of Affordable Housing Units (either by way of Deferred Affordable Housing Contribution or through a Deferred Affordable Housing Scheme(s)) in earlier Phases that occurred before the date of any Viability Review;

**"Viability Assessment 1"** means the Viability Assessment which shall only consider the viability of the Relevant Balance of the Development;

**"Viability Assessment 2"** means the Viability Assessment which shall only consider the viability of the Relevant Balance of the Development;

**"Viability Review"** means any review of a Viability Assessment by the Borough Council's Assessor in accordance with Part 2 of Schedule 2 to this Deed with the purpose of determining the viability of the Relevant Balance of the Development (as applicable to the respective Viability Assessment) in order to calculate whether any Surplus exists and is to be applied to Deferred Affordable Housing Units and/or Deferred Contributions and/or recovery of HIF Funding and the amount of such provision or payment;

**"Viability Review Template"** means the template form for the Viability Review of Viability Assessment1 and Viability Assessment 2 attached to this Deed at Appendix 5;

**"Viability Review Explanatory User Guide"** as attached to this Deed at Appendix 5;

**"Waste Facilities"** means the existing household waste and recycling centres at Foxhall Road and Portman's Walk;

**"Working Day"** means any day other than a Saturday, Sunday, statutory bank holiday and 24 December to 31 December (inclusive) in any year;

**"Works Agreement"** means any agreement relating to the provision, installation, maintenance and (where appropriate) adoption of infrastructure works made pursuant to:

- (a) Section 38 or Section 278 of the 1980 Act or similar agreement for the construction maintenance and adoption of any footways footpaths verges visibility splays junctions roundabouts bridges bus lay-bys cycle ways accommodation works traffic management schemes street lighting and street furniture and ancillary landscaping and the connection of the same to the public highway or any other works to the public highway;
- (b) Section 98 or Section 104 of the Water Industry Act 1991 or similar agreement relating to the provision and adoption of any sewers drains pipes manholes culverts channels watercourses soakaways outfalls and other conduits and apparatus systems necessary for drainage ("Drainage System") or for the diversion of existing Drainage Systems;
- (c) any agreement with a relevant authority for the diversion or undergrounding of existing or the installation of any new service media required for the provision and supply of water gas electricity telephone telecommunications cable television closed circuit television (if appropriate) and all other appropriate services;

and/or any other similar agreement or deed of grant required for the carrying out provision maintenance cleansing and (where appropriate) adoption of works by a relevant authority and shall include any variations or modifications to any Works Agreement from time to time agreed with any relevant authority.

## **2. INTERPRETATION**

- 2.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.2 Unless the context requires otherwise reference in this Deed to clauses, sub-clause s, paragraphs, recitals, sub-paragraphs, appendices and schedules are references to those contained in this Deed and references to plans and drawings are references to plans and drawings annexed to this Deed.
- 2.3 The word "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
- 2.4 References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same.

- 2.5 In this Deed the expressions Borough Council, County Council or the Owner shall include their respective statutory successors in respect of the functions to which this Deed relates or successors in title to the Site or any party deriving title through or under that party as the case maybe.
- 2.6 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use Reasonable Endeavours not to permit or suffer such act or thing to be done by another person.
- 2.7 The Interpretation Act 1978 shall apply to this Deed.
- 2.8 In the event of any conflict between the provisions of this Deed and any document attached hereto the provisions of this Deed will prevail.
- 2.9 Where in this Deed the Borough Council and/or the County Council is required to give any approval, consent, agreement or otherwise then such approval, consent, agreement or otherwise by the Borough Council and/or County Council shall be given in writing and shall not be deemed to have been given unless in writing.
- 2.10 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.11 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 as interchangeable in that manner.
- 2.12 Wherever 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 unless there is an express provision otherwise.

### 3. LEGAL EFFECT

3.1 This Deed is made pursuant to section 106 of the 1990 Act; section 111 of the 1972 Act; section 33 of the 1982 Act; section 1 of the 2011 Act; section 278 of the 1980 Act; and section 38 of the 1980 Act (in respect of the obligations contained in clause 9 and paragraphs 2.2 and 3.1 of Part 1 of Schedule 4); and all other enabling powers, and the obligations contained in Schedules 1 - 17 to this Deed constitute planning obligations for the purposes of the 1990 Act, binding the Owner's interests in the Site, shall be enforceable against the Owner and its successors in title and those deriving title from it in respect of the Site by the Borough Council and/or the County Council as local planning authorities under the 1990 Act **PROVIDED THAT** (save for the restrictions on Occupation in Schedule 2 and any obligations, restrictions made by or imposed on the Owner):

3.1.1 neither the Owner nor its successors in title shall have any further liability under this Deed in respect of any part of the Site in which it no longer has an interest but without prejudice to any rights of the Borough Council and/or the County Council in respect of any antecedent breach in respect of the Site or such part thereof disposed;

3.1.2 this Deed shall not be binding on an Affordable Housing Provider or its successors in title or mortgagee except as provided for in Schedule 2;

- 3.1.3 this Deed shall not be binding on the individual owners, occupiers or lessee s of any Residential Unit or any mmigagee of such a person or any successor in title to any such person or mortgagee except as provided for in Schedule 2;
- 3.1.4 this Deed shall not be binding on the owners, occupiers or lessees of any Commercial Unit or any mortgagee of such a person or any successor in title to any such person or mortgagee or any mortgagee of such a person or any successor in title to any such person or mortgagee; and
- 3.1.5 this Deed shall not be binding on any Utilities Provider.

3.2 So far as the obligations, covenants and undertakings in this Deed are given by the Borough Council, or the County Council they arc entered into under the relevant powers referred to in clause 3.1 and those obligations, covenants and undertakings are enforceable against the Borough Council or the County Council (as applicable).

**4. CONDITIONALITY**

4.1 The covenants and obligations contained in this Deed are condit ional upon both the:

- 4.1.1 grant of the Planning Permission; and
- 4.1.2 Commencement of Development

Save for the provisions of clauses 11, 11.2.3, 13, 14, 17, 19, 27, 29 and 30, Part 2 of Schedule 2 in relation to an Early Viability Review, Paragraph 1 of Schedule 4 and Schedule 14 which shall come into effect immediately upon complet ion of this Deed PROVIDED THAT it is agreed by the Parties that any liability in respect of any payments which may become due pursuant to Schedule 13 shall not come into effect until the Development has been begun for the purposes of section 56 of the 1990 Act and which FOR THE AVOIDANCE OF DOUBT shall includ e all relevant provisions and obligations which require satisfaction by the Owners prior to Commencement of Development.

**5. PROVISIONS FOR RELEASE**

5.1 It is agreed that this Deed shall determine at such time as the Planning Permission expires or is quashed, cancelled or revoked save insofar as it has already been complied with and without prejudice to any liability which may have arisen pursuant to this Deed beforehand.

5.2 Where this Deed determines pursuant to clause 5.1 above or upon the Owner satisfying all of their obligations under this Deed the Borough Council and the County Council in respect of clause 5.2.2 each covenants with the Owner that they will:-

- 5.2.1 remove all entries made in the Register of Local Land Charges in respect of this Deed within 20 (twenty) Working Days of it ceasing to have effect;
- 5.2.2 subject to clause 5.1 repay any unspent Contributions as set out in paragraph 1.2 of Schedule 15 in relation to the Borough Council and paragraph 3 of Schedule 16 in relation to the County Council PROVIDED ALWAYS that where before the Relevant BC or SCC Contribution Date or Relevant Underspend Date (whichever is applicable) a Contributions Contract(s) has been entered into by the Borough Council or the County Council (as appropriate) in respect of the intended purposes of the relevant Contribution the unexpended part of the relevant Contributio n shall not be repaid until such payments pursuant to such

Contributions Contract(s) is made and the unexpended part of the Contributions to be repaid (if any) shall not include such payment pursuant to any such Contributions Contract(s).

## **6. CERTIFICATES OF COMPLIANCE**

- 6.1 Upon reasonable request from the Owner and subject to payment of the Borough Council's reasonable and proper professional costs and charges the Borough Council shall certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed and request that a note thereof shall be registered on the Register of Local Land Charges.
- 6.2 Upon reasonable request from the Owner and subject to payment of the County Council's reasonable and proper professional costs and charges the County Council shall certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed.

## **7. COVENANTS**

- 7.1 The Owner covenants to observe and perform the obligations set out in Schedules 1 to 14 and 17 and those contained in any relevant clause(s) in this Deed
- 7.2 The Borough Council covenants to observe and perform the obligations set out in Schedule 15, those obligations imposed on it pursuant to Schedule 2 and any other obligations imposed on the Borough Council in this Deed.
- 7.3 The County Council covenants to observe and perform the obligations set out in Schedule 16 and any other obligations imposed on the County Council in this Deed.
- 7.4 In order to ensure the effective delivery of development across Ipswich Garden Suburb the Owner covenants with the Borough Council and the County Council that it will use Reasonable Endeavours to ensure that all new infrastructure and services including access, utilities, energy and sewerage/drainage infrastructure:
- 7.4.1 is designed and built to accommodate the proposed level of development proposed for the sites as set out in Local Plan policy CS10 and the Ipswich Garden Suburb SPD;
- 7.4.2 is fully integrated across the Ipswich Garden Suburb site without any restriction, impediment or ransom between sites; and
- 7.4.3 is delivered in accordance with the requirements of the IGS Infrastructure Delivery Plan subject to the deliberations of the Ipswich Garden Suburb Delivery Board.

## **8. BOROUGH COUNCIL'S AND COUNTY COUNCIL'S POWERS**

- 8.1 Nothing in this Deed shall fetter the statutory rights, powers and duties of the Borough Council as local planning authority.
- 8.2 Nothing in this Deed shall fetter the statutory rights, powers and duties of the County Council as a local planning authority and/or the local highway authority and/or the local education authority and/or local waste authority and/or local library authority and/or of any other rights, functions, powers, duties and obligations of the County Council in the exercise of their functions as a local authority as the case may be.

**9. REALLOCATION OF CONTRIBUTIONS**

9.1 The parties to this Deed hereby acknowledge that:

9.1.1 the Borough Council Contributions and the County Council Contributions secured herein have been reduced during the consideration of the Application and that the reductions have been accepted by the Borough Council and the County Council for reasons of viability and conditional upon the inclusion of the Contribution Re-allocation Mechanism; and

9.1.2 the Borough Council Contributions, the County Council Contributions and the Contribution Re-allocation Mechanism fall properly to be considered as material to the determination of the Application and in compliance with Regulation 122 of the CIL Regulations.

9.2 In the event of each and any instance of a BC and/or SCC Contribution Underspend, the Borough Council may use the Residual Contribution Sum toward the provision of additional off-site Affordable Housing PROVIDED THAT the Borough Council shall not expend any monies toward the provision of additional off-site Affordable Housing where that provision taken together with the Affordable Housing provided within the Development AND any Surplus paid to the Borough Council in accordance with the provisions of Part 2 of Schedule 2 to this Deed, would exceed the Affordable Housing Policy Requirement PROVIDED FURTHER THAT if at the Relevant Underspend Date there remains any unspent Residual Contribution Sum then the provisions of paragraphs 1.2 of Schedule 15 and paragraph 3 of Schedule 16 shall in each case apply.

**10. WAIVER**

No waiver (whether expressed or implied) by the Borough Council or County Council 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 Borough Council or County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**11. CHANGE OF OWNERSHIP**

11.1 The Owner covenants to give the Borough Council and the County Council immediate written notice of any change in ownership 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 to be provided at the same time as the written notice.

11.2 Save for the notification obligations in Schedule 15 the Owner shall not be required to notify the Borough Council and the County Council of any of the following:

11.2.1 the sale or letting of any individual Residential Unit;

11.2.2 the sale or letting of any individual Commercial Unit(s); or

11.2.3 the grant of rights to statutory undertakers within the meaning of section 262 of the 1990 Act.

## **12. REGISTRATION AS A LOCAL LAND CHARGE**

It is hereby agreed and declared between the parties hereto that the Borough Council shall forthwith register this Deed as a Local Land Charge for the purposes of the Local Land Charges Act 1975.

## **13. THIRD PARTIES' RIGHTS**

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1990 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **14. MONITORING**

14.1 On the first anniversary of this Deed and every six months thereafter until the Occupation of the last Residential Unit constructed pursuant to the Planning Permission the Owner shall provide a monitoring report to the Borough Council and to the IGS Delivery Board which shall set out the following:

- 14.1.1 details of progress in relation to each of the obligations contained in this Deed;
- 14.1.2 the total Contributions paid to the Borough Council and the County Council pursuant to this Deed;
- 14.1.3 the number of Market Value Units and Affordable Housing Units Occupied in the preceding quarter and in total since Commencement; and
- 14.1.4 the projected number of Market Value Units and Affordable Housing Units anticipated to be Completed within the next six months.

## **15. DISPUTE RESOLUTION**

15.1 In the event of any dispute or difference arising between any or all of the Parties to this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Deed) such dispute or difference may be referred to the Expert and it is further agreed that:

- 15.1.1 the determination of the Expert shall be:
  - 15.1.1.1 final and binding on the parties to the dispute; and
  - 15.1.1.2 complied with by the parties to the dispute, save in the case of manifest error;
- 15.1.2 the parties to the dispute shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
- 15.1.3 the Expert's costs shall be borne in such proportions as he/she may direct failing which each party to the dispute shall bear its own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of parties to the dispute (excluding the Expert) to the reference;
- 15.1.4 the Expert shall be appointed subject to an express requirement that he/she reaches a decision and communicates it to the parties to the dispute within the

minimum practicable timescales allowing for the nature and complexity of the dispute and in any event not more than 35 Working Days from the date of his/her appointment to act; and

- 15.1.5 the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee shall be appointed in the same manner as the Expert.
- 15.2 The provisions of this clause shall not affect the ability of the Borough Council or the County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.
- 15.3 The provisions of this clause 15 will not affect the ability of any Party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

## 16. VARIATIONS

Save as provided in clause 17 below and in Schedule 14 to this Deed, no variation of this Deed shall be effective unless made by Deed or pursuant to the determination of an application made under section 106A of the 1990 Act or an appeal pursuant to section 106B of the 1990 Act.

## 17. SECTION 73 APPLICATIONS

17.1 In the event that any new planning permission is granted in respect of the Development pursuant to section 73 of the 1990 Act then, subject to agreement between the Parties (or their successors) with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:

17.1.1 the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind the Site in respect of any planning permission granted pursuant to section 73 of the 1990 Act; and

17.1.2 the definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under section 73 of the 1990 Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s),

**PROVIDED THAT** nothing in this clause shall fetter the discretion of the Borough Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to section 106 of the 1990 Act or a modification agreement pursuant to section 106A of the 1990 Act.

17.2 Subject to the proviso at clause 17.1 of this Deed (and provided further that no more than 815 (eight hundred and fifteen) Residential Units are proposed), if a new planning application pursuant to Section 73 of the 1990 Act has both been submitted and validated within two (2) years of the date of this Deed, the Parties agree that in relation to any viability assessment that might be undertaken in association with such planning application:



- 17.2.1 shall be treated and carried out the same as a Viability Assessment (as defined in this Deed);
- 17.2.2 Save for any Early Viability Assessment, the Viability Review Template, Viability Review Explanatory User Guide and Viability Appraisal Inputs shall apply and be used to carry out such viability assessment;
- 17.2.3 the provisions of Part 2 of Schedule 2 and associated definitions shall apply to such viability assessment such that:
  - 17.2.3.1 if the assessment is submitted prior to or at the same time as an Early Viability Assessment: the terms Early Viability Surplus Deferred Contributions and Deferred Affordable Housing Scheme and Deferred Affordable Housing Units (as defined in this Deed), paragraphs 2.1, 2.4 to 2.6 (inclusive), 3, 4, 5.1 to 5.3 (inclusive), 6.2, paragraphs 7.1.1, 7.1.2.1, 7.1.3.1 and 7.1.4.1;
  - 17.2.3.2 if the assessment is submitted prior to or at the same time as Viability Assessment 1: the terms Surplus, Deferred Affordable Housing Units, Deferred Affordable Housing Scheme and Deferred Contributions (as defined in this Deed), paragraphs 2.2 to 2.6 (inclusive), 3, 4, 5.1, 5.3, 6.1, paragraphs 7.1.1, 7.1.2.2, 7.1.3.2 and 7.1.4.2;
  - 17.2.3.3 if the assessment is submitted prior to or at the same time as Viability Assessment 2: the terms Surplus, Deferred Affordable Housing Units, Deferred Affordable Housing Scheme and Deferred Contributions (as defined in this Deed), paragraphs 2.2 to 2.6 (inclusive), 3, 4, 5.1, 5.3, 6.1, paragraphs 7.1.1, 7.1.2.3, 7.1.3.3 and 7.1.4.3.

## **18. SERVICE OF NOTICES**

- 18.1 All notices, requests, demands or other written communications to or upon the respective Parties hereto pursuant to this Deed shall be deemed to have been properly given or made if sent by hand or by courier service or letter by way of first class post or recorded delivery post to the Party to which such notice, request, demand or other written communication is to be given or made under this Deed and addressed as follows:
  - 18.1.1 if to the Borough Council marked for the attention of Operations Manager (Planning and Development) and Principal Planning Officer - Special Projects, Ipswich Borough Council, Grafton House, 15-17 Russell Road, Ipswich IP1 2DE;
  - 18.1.2 if to the County Council to Endeavour House 8 Russell Road, Ipswich, Suffolk, IP1 2BX marked for the attention of the Director of Growth Highways and Infrastructure; and
  - 18.1.3 if to the Owner to c/o Birketts Solicitors, 22 Station Road, Cambridge, CB1 2JD marked with reference number 309045.4 or as otherwise notified from time to time pursuant to Clause 11.1.

- 18.2 Any notice request or demand or other written communication shall be deemed to have been served as follows:-
- 18.2.1 if delivered by hand, the next Working Day after the day of delivery unless the delivery was signed for in which case it shall be the time the delivery was signed for that service will be deemed to have occurred;
  - 18.2.2 if sent by first class post, the day 2 Working Days after the date of posting; or
  - 18.2.3 if sent by recorded delivery, at the time delivery was signed for
- and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) as the case may be.
- 18.3 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 18.4 Any notice or other written communication to be given by the Borough Council, or the County Council will be deemed valid and effectual if on its face it is signed on behalf of the Borough Council, or the County Council (as applicable) by an officer or duly authorised signatory.

## **19. BOROUGH COUNCIL'S AND COUNTY COUNCIL'S LEGAL COSTS**

- 19.1 The Owner agrees that upon completion of this Deed it will pay the Borough Council's reasonable legal costs properly incurred in the negotiation and completion of this Deed.
- 19.2 The Owner agrees that upon completion of this Deed it will pay the County Council's reasonable legal costs properly incurred in the negotiation and completion of this Deed.

## **20. MORTGAGEES' CONSENT**

The Mortgagees acknowledge and declare that this Deed has been entered into by the Owner with their consent and that the Site shall be bound by the obligations contained in this Deed and that the security of their charges over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagees shall otherwise have no liability under this Deed unless they take possession of the Site in which case they too will be bound by the obligations as if they were person(s) deriving title from the Owner.

## **21. VAT**

If VAT becomes payable on payments made under this Deed that VAT will be additional to the specified payments and any VAT due will be paid following production of a valid VAT invoice in respect of any vatable supplies properly incurred under this Deed.

## **22. 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.

## 23. REASONABLENESS

Unless expressly stated otherwise where under this Deed any approval or consent, certificate, direction, authority, agreement, action, expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval or consent, certificate, direction, authority, agreement, action, expression of satisfaction, or response, it will not be unreasonable or unreasonably withheld or delayed and the Parties will act reasonably at all times.

## 24. INDEXATION

Where any obligation in this Deed requires the Owner to pay, provide or make available any sum of money (by way of Contribution or any instalment thereof or otherwise), the amount to be paid, provided or made available shall be adjusted (upwards only) by reference to changes in the relevant Index in accordance with the following formula:

$$A \times (B/C) = D$$

where:

**A** is the sum of money stated in this Deed;

**B** the figure shown in the relevant Index for the period immediately prior to the date on which the sum concerned is due to be paid or where such sum is paid earlier than it is due the relevant Index for the period immediately prior to the date upon which it is paid under the provisions of this Deed;

**C** is the figure shown in the relevant Index for the period immediately prior to the date the Planning Permission is granted; and

**D** is the amount of money required to be paid,

**PROVIDED THAT** if the relevant Index is no longer maintained the above formula will be applied *mutatis mutandis* (so far as it relates to periods after it ceases to be so maintained) by reference to such other publication or index as may be agreed from time to time between the Parties.

## 25. CHALLENGE AND TERMINATION

### 25.1 Notification of a Challenge

If there is a Challenged Permission then as soon as reasonably practicable following the date that the Borough Council is aware of such Challenge, the Borough Council will notify the Owner and the County Council of such Challenge, including any key dates relevant to associated legal proceedings (the "**Notice Date**").

### 25.2 Temporary suspension of the Deed

25.2.1 If the Owner ceases to carry out any works pursuant to a Challenged Permission, then the requirement for the Owner or the Borough Council or the County Council to comply with or comply further with the obligations contained in this Deed that have not fallen due (whether they be payments or other obligations) will be suspended temporarily from the Notice Date (save in respect of the rights of the Borough Council and/or the County Council in relation to any subsisting breach of this Deed arising before the cessation of works pursuant to the

Challenged Permission by the Owner) until the Final Disposal of the legal proceedings.

25.2.2 If the Challenged Permission is not quashed, the requirement to comply or further comply (as applicable) with any obligation contained in this Deed in accordance with its terms relating to the Challenged Permission (as may be varied by order of the court) will recommence with immediate effect following a decision on the Challenged Permission (unless the decision is that the Planning Permission be quashed, cancelled or revoked).

25.2.3 In the event of a Challenge, any time-limits for compliance with the obligations contained in this Deed will be extended by the same period of suspension calculated from the Notice Date to the date of the Final Disposal of the legal proceedings SAVE THAT any compliance with obligations linked to restriction(s) on Occupation, shall not be affected and/or extended by reference to this clause 25 unless agreed by the Borough Council and/or the County Council (as applicable) at their sole discretion.

## **26. RIGHT OF ENTRY**

At all times on not less than forty-eight (48) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of either or all of the Borough Council or the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT the access to enter the Site as provided for by this clause shall only be permitted on the basis that if reasonably requested by the Owner the Borough Council's or the County Council's (as applicable) duly authorised representatives shall undertake appropriate health and safety training to ensure compliance with relevant statutory requirements whilst on the Site AND will undertake appropriate induction training as may be directed by the Owner before entering the Site.

## **27. WARRANTY**

The Owner covenants and warrants in respect of its interests in the Site to the Borough Council and the County Council that it has full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site other than as set out in this Deed whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

## **28. MISCELLANEOUS**

28.1 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived.

28.2 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Borough Council, or the County Council.

28.3 The Parties agree that any mortgagee or chargee from time to time will *only* be liable for any breach of the provisions of this Deed:-

28.3.1 to the extent that such breach affects a part of the Site in which the mortgagee or chargee has an extant legal interest; and

28.3.2 arising during such period as it is a mortgagee or chargee in possession of the whole or any part of the Site.

28.4 For the avoidance of doubt, a mortgagee or chargee will not be liable for any breach of the provisions of this Deed after it has parted with or released its interest in the relevant part of the Site save for any antecedent breach(es).

## **29. JURISDICTION AND LAW**

29.1 This Deed including its construction, validity, performance and enforcement 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 English law.

29.2 Each Party irrevocably agrees that the courts of England have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

29.3 If any provision of this Deed is declared by any court to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the Parties shall amend that provision in accordance with the decision of the court provided that any Party may seek the written consent of the other Parties to the termination of this Deed on such terms (including the entering into of another agreement) as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the Parties.

## **30. DATE OF DELIVERY**

This Deed is delivered on the date of this Deed.

## **31. COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed (and delivered) shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement

**SCHEDULE 1: COMMENCEMENT AND  
COMPLETION**

The Owner covenants with the Borough Council and the County Council as follows:

**1. Commencement Notice**

- 1.1 To serve the Commencement Notice on the Borough Council and the County Council at least 15 (fifteen) Working Days prior to Commencement of Development;
- 1.2 Not to Commence the Development unless and until it has complied with paragraph 1.1 of this Schedule 1.

**2. Monitoring**

- 2.1 To pay the Monitoring Contribution to the Borough Council prior to Commencement of Development.
- 2.2 Not to Commence Development until it has paid the Monitoring Contribution to the Borough Council.

## SCHEDULE 2: AFFORDABLE HOUSING

### Part 1: General

The Owner covenants with the Borough Council:

1. To carry out the Development on each part of each Phase in accordance with any approved Affordable Housing Delivery Plan for the relevant part of the Phase;
2. Within two years of the receipt of detailed planning permission for the whole or part of the first Phase of Development which includes Residential Units (which for the avoidance of doubt shall include all Reserved Matters Approvals for the Residential Units within that whole or part of that Phase) to use Reasonable Endeavours to construct and make available for Occupation thirty Residential Units together with all associated infrastructure including but not limited to access and drainage infrastructure;
3. To provide:
  - 3.1 4% (four percent) of the Residential Units as Affordable Housing Units such units to be provided within the first 456 (four hundred and fifty six) Residential Units constructed within the Development and not to Occupy more than 456 (four hundred and fifty six) Residential Units until those Affordable Housing Units have been constructed and Practically Completed.
  - 3.2 not less than 4% (four per cent) of the Residential Units as Affordable Housing Units;
  - 3.3 not less than 50% (fifty percent) of the Affordable Housing Units within the Development as Affordable Rented Units (being 17 (seventeen) Affordable Rented Units) (unless otherwise agreed in writing between the Owner and the Borough Council); and
  - 3.4 not more than 50% (fifty percent) of the Affordable Housing Units within the Development as Intermediate Affordable Housing Units (being 16 (sixteen) Intermediate Affordable Housing Units) (unless otherwise agreed in writing between the Owner and the Borough Council);
4. In the event the Owner proposes to dispose of any Affordable Housing Unit(s) to an Affordable Housing Provider that is not an Approved Affordable Housing Provider, the Owner shall prior to Commencement of Development within the relevant part of the Phase obtain the Borough Council's written approval for the proposed Affordable Housing Provider(s) for the relevant Parcel of the Development, (such approval not to be unreasonably withheld or delayed) PROVIDED THAT the Borough Council's approval shall be deemed to have been given if the Borough Council has not within 20 (twenty) Working Days of receipt of the Owner's written request seeking such approval written to the Owner to reject (with justified reasons) the proposed Affordable Housing Provider(s).
5. The Owner shall:
  - 5.1 proceed diligently and with all due expedition to negotiate and enter into an Affordable Housing Contract in respect of the relevant Affordable Housing Units to be provided pursuant to this Schedule;
  - 5.2 notify the Borough Council within 10 (ten) Working Days of entering into an Affordable Housing Contract.

6. In relation to the first 456 (four hundred and fifty six) Residential Units, not to Occupy more than:
- 6.1 50% (fifty per cent) of the Market Value Units unless and until 50% (fifty per cent) of the Affordable Housing Units have either:
- 6.1.1 in relation to the Affordable Rented Units been completed and transferred to an Affordable Housing Provider pursuant to an Affordable Housing Contract; and
- 6.1.2 in relation to the Intermediate Affordable Housing Units been Completed and made available for Occupation.
- 6.2 85% (eighty five per cent) of the Market Value Units unless and until 100% (one hundred per cent) of the Affordable Housing Units have been completed and:
- 6.2.1 in relation to the Affordable Rented Units, have been Completed and transferred to an Affordable Housing Provider pursuant to an Affordable Housing Contract; and
- 6.2.2 in relation to the Intermediate Affordable Housing Units, have been Completed and made available for Occupation.
7. Subject to any Deferred Affordable Housing Scheme being agreed or determined in accordance with Part 2 of this Schedule 2 not to Occupy more than 85% (eighty five percent) of the Market Value Units in a relevant Parcel unless and until 100% of any Affordable Rented Units included in the Deferred Affordable Housing Scheme for that Parcel have been:
- 7.1 completed; and
- 7.2 transferred to an Affordable Housing Provider pursuant to an Affordable Housing Contract.
8. Subject to any Deferred Affordable Housing Scheme being agreed or determined in accordance with Part 2 of this Schedule 2 not to Occupy more than 75% (seventy five per cent) of the Market Value Units in a relevant Parcel until 100% (one hundred per cent) of any Intermediate Affordable Housing Units included in the Deferred Affordable Housing Scheme for that Parcel have been completed.
9. Save for any Affordable Housing Units provided in accordance with any agreed or determined Deferred Affordable Housing Scheme not to provide the Affordable Housing Units otherwise than in accordance with the following Affordable Housing Mix (unless otherwise agreed in writing between the Owner and the Borough Council) and the following Affordable Housing Mix shall only apply and be achieved across the first 456 Residential Units forming part of the Development as a whole rather than be imposed and have to be achieved in each Phase that may form part of the first 456 Residential Units:

Unit type	Proportion of Total Affordable Housing Units
1 bed dwellings	20%
2 bed dwellings	60%



-Unit Type	Rroportion of Total Affordable Housing Units
3 bed dwellings	20%

Subject to a tolerance of +/- 2.5% on all units.

10. Not offer or make the Affordable Rented Units available otherwise than in accordance with the Gateway to Home Choice Regional CBL unless from time to time is otherwise agreed in writing between the Owner and the Borough Council save where the Affordable Rented Units have been transferred to an Affordable Housing Provider in which case any agreement from time to time shall be as between that Affordable Housing Provider and the Borough Council.
11. Save as provided for in paragraph 11.1 of this Part of this Schedule below, the Owner covenants with the Borough Council in respect of the Affordable Housing not to Occupy or cause or permit to become Occupied the Affordable Housing Units for any purpose other than for Affordable Housing in Perpetuity.
  - 11.1 The provisions of this Schedule 2 shall not be binding on:
    - 11.1.1 any mortgagee or chargee or any successor in title thereto and their respective mortgagees or chargees; or
    - 11.1.2 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "**Receiver**") of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
      - 11.1.2.1 such mortgagee or chargee or Receiver shall first give written notice to the Borough Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of not less than three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Affordable Housing Provider or to the Borough Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
      - 11.1.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely.
  - 11.1.3 any Shared Ownership Unit where 100 per cent of the equity in that Shared Ownership Unit has been purchased by the tenant via Staircasing;

- 11.1.4 any completed Affordable Housing Units where an Affordable Housing Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable;
  - 11.1.5 any completed Affordable Housing Units where a Affordable Housing Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof;
  - 11.1.6 any Intermediate Affordable Housing Units where the occupier is also the owner of the entire equity in the property; or
  - 11.1.7 any person or body deriving title through or from any of the parties mentioned in this paragraph 11.1.
- 11.2 Upon the transfer of any Affordable Housing Units to an Affordable Housing Provider the obligations imposed on the Owner in this Schedule 2 in relation to those Affordable Housing Units shall be observed and performed by the Affordable Housing Provider and where any obligation is expressed as an obligation on the Owner to procure any act on the part of the Affordable Housing Provider, such obligation shall be construed as an obligation of the Affordable Housing Provider to itself perform the obligation in question.
12. Subject to the terms of this Schedule:
- 12.1 no Affordable Rented Unit provided under the terms of this Schedule shall be Occupied other than as an Affordable Rented Unit and all occupational leases and tenancies of such units shall include a provision preventing sub-letting and underletting save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Affordable Rented Unit;
  - 12.2 the Affordable Housing Provider(s) within each whole or part of a Parcel shall submit annual reports commencing on the first Occupation of any of the Affordable Rented Units demonstrating that the Affordable Rents charged do not exceed 80% of Open Market Rent;
  - 12.3 no Intermediate Affordable Housing Unit provided under the terms of this Schedule shall be Occupied other than as an Intermediate Affordable Housing Unit save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Intermediate Affordable Housing Unit.

## **Part 2: Viability Reviews**

### **1. Viability Review Trigger**

- 1.1 In the event that the Owner anticipates that it will fail to meet the obligation at paragraph 2 of Part 1 of this Schedule 2 it shall submit an Early Viability Assessment to the Borough Council's Assessor no later than 4 (four) weeks prior to the Early Viability Review Date and shall not permit any further Occupation of the Development until the Viability Assessment has been agreed or determined.

### **Viability Assessment 1**

- 1.2 To submit Viability Assessment 1 to the Borough Council prior to submitting Reserved Matters Application(s) for any more than 456 (four hundred and fifty six) Residential Units (in aggregate) but not earlier than the Legal Completion or Occupation of (in aggregate) any more than 50 Residential Units.
- 1.3 The Owner shall not:
  - 1.3.1 submit Reserved Matters Applications for more than 455 (four hundred and fifty five) Residential Units nor effect the Legal Completion or Occupation of (in aggregate) more than 455 (four hundred and fifty five) Residential Units until Viability Assessment 1 has been submitted to the Borough Council; and
  - 1.3.2 Practically Complete more than 475 (four hundred and seventy five) Residential Units until in connection with Viability Assessment 1 the value of any Surplus and any Deferred Affordable Housing Scheme (where a Deferred Affordable Housing Scheme is agreed or determined to utilise the whole or part of such Surplus) has been agreed with the Borough Council or otherwise determined by an Expert.
- 1.4 Following the submission of Viability Assessment 1 (and at no time before) the Owner shall be entitled to submit Reserved Matters Applications and secure Reserved Matters Approvals for up to an aggregate of 550 (five hundred and fifty) Residential Units until in connection with Viability Assessment 1 the value of any Surplus and any Deferred Affordable Housing Scheme (where a Deferred Affordable Housing Scheme is agreed or determined to utilise the whole or part of such Surplus) has been agreed with the Borough Council or otherwise determined by an Expert PROVIDED ALWAYS THAT the Borough Council and the Owner agree that where the Surplus and any Deferred Affordable Housing Scheme have been agreed or determined after the date a Reserved Matters Application has been submitted in accordance with this paragraph 1.4 then the Owner shall be required to accommodate any Deferred Affordable Housing Units within such Reserved Matters Applications or such Reserved Matters Approvals as approved pursuant to Viability Assessment 1 and any agreed or determined Deferred Affordable Housing Scheme.
- 1.5 The Owner shall not submit Reserved Matters Applications to the Borough Council for an aggregate of more than 550 (five hundred and fifty) Residential Units across the Development unless in connection with Viability Assessment 1 the value of any Surplus and a Deferred Affordable Housing has been agreed with the Borough Council or otherwise determined by an Expert.

### **Viability Assessment 2**

- 1.6 To submit a Viability Assessment to the Borough Council no earlier than the Legal Completion or Occupation of (in aggregate) 600 (six hundred) Residential Units and no later than the Legal Completion or Occupation (in aggregate) of 650 (six hundred and fifty) Residential Units and not to Legally Complete or Occupy more than 650 (six hundred and fifty) Residential Units until the Viability Assessment has been submitted.
- 1.7 The Owner shall not affect the Legal Completion or Occupation of (in aggregate) more than 700 (seven hundred) Residential Units across the Development unless the value of any Surplus in connection with Viability Assessment 2 has been agreed with the Borough Council or otherwise determined by an Expert

## **2. Viability Assessment**

- 2.1 Any Viability Assessment submitted in accordance with paragraph 1.1 of this Part 2 of Schedule 2 shall be submitted and prepared by the Owner as an Early Viability Assessment.
- 2.2 Viability Assessment 1 and Viability Assessment 2 will be prepared by the Owner in the form of the Viability Review Template and shall be carried out in accordance with the notes detailed in the Viability Review Template and the Viability Appraisal Inputs.
- 2.3 The parties to this Deed hereby acknowledge and agree in respect of Viability Assessment 1 and Viability Assessment 2 (only) that the Viability Review Explanatory User Guide:
- 2.3.1 shall/may be used as a tool to inform the Viability Review of Viability Assessment 1 and Viability Assessment 2;
  - 2.3.2 that it will be used to inform the completion of the Viability Review Template and in the consideration of the submitted Viability Assessment; but
  - 2.3.3 that it is not a substitute for nor an alternative to the provisions of this Part 2 of Schedule 2 or the definitions used herein.
- 2.4 The Owner shall not submit a Viability Assessment unless and until they have first given the Borough Council twenty (20) Working Days' notice and within twenty (20) Working Days of receipt of such written notice from the Owner, the Borough Council shall appoint the Borough Council's Assessor and provide the Owner with details of the same.
- 2.5 The Borough Council will not appoint any Borough Council's Assessor for the purpose of paragraph 2 of this Part 2 unless the terms of such appointment include a requirement for the Borough Council's Assessor to issue their final report to the Borough Council within 50 (fifty) Working Days of the Validation Date.
- 2.6 The Borough Council will not appoint any Borough Council's Assessor for the purposes of paragraphs 3 and 4 of this Part 2 unless the terms of such appointment stipulate that the Borough Council's Assessor shall (subject to the provisions of paragraph 3.4.2 of this Part 2 of this Schedule 2) only make a single request for further information prior to confirming the Validation Date

## **3. Proposals For Deferred Affordable Housing Units and/or Deferred Contributions**

- 3.1 At the time the Owner submits any Viability Assessment to the Borough Council the Owner will submit a written statement to the Borough Council setting out the following:
- 3.1.1 confirming whether an Early Viability Surplus or a Surplus has arisen; and
  - 3.1.2 confirming the value of any Early Viability Surplus or Surplus; and
  - 3.1.3 (subject to paragraph 3.2) including a Deferred Affordable Housing Scheme; and
  - 3.1.4 (if applicable) the proposed value of any Deferred Contributions .

3.2 In relation to Viability Assessment 2 only, if no Deferred Affordable Housing Scheme is submitted with the written statement required to be submitted to the Borough Council pursuant to the provisions of paragraph 3.1 of Part 2 of this Schedule, the written statement shall be accompanied by:-

- 3.2.1 the Owner's justification (financial and/or otherwise) as to why no Deferred Affordable Housing Units can be provided as part of the Development; and
- 3.2.2 a Deferred Contributions proposal in the event that the written statement demonstrates that Deferred Contributions can be made.

Subject to paragraph 5.1.2 of this Schedule 2 Part 2, the parties hereby acknowledge and agree that 50% (fifty per cent) of the Borough Council Surplus arising under an Early Viability Assessment, and/or 50% (fifty per cent) of the Borough Council Surplus arising under Viability Assessment 1 shall be provided as Deferred Affordable Housing Units within the Relevant Balance as applicable to each of those assessments.

3.3 Within ten (10) Working Days of receipt by the Borough Council of a Viability Assessment (unless otherwise agreed between the Borough Council and the Owner), the Borough Council shall either:-

- 3.3.1 confirm in writing to the Owner that the Borough Council's Assessor on the Borough Council's behalf has received a valid Viability Assessment (the "**Validation Date**"); or
- 3.3.2 notify the Owner in writing that the Owner must first respond to the Borough Council's Assessor's request for further technical, financial, planning, legal or other information as acting reasonably the Borough Council's Assessor deems necessary in order to assess viability before the Borough Council will confirm a valid Viability Assessment has been received.

PROVIDED THAT where paragraph 3.3.2 applies such request from the Borough Council's Assessor must be received by the Owner within fifteen (15) Working Days of receipt by the Borough Council's Assessor of a Viability Assessment otherwise it shall be deemed that the Validation Date shall have occurred AND for the avoidance of doubt nothing in this paragraph 3 shall amount to agreement of any of the matters contained in the Viability Assessment nor preclude the Borough Council's Assessor from seeking further relevant information during the course of negotiations provided that seeking further relevant information shall not be a reason for delaying the Viability Review if it can be progressed or for completing any other process required by this paragraph if it can be completed without the information requested in paragraph 3.3.2 above.

- 3.4 On receipt of any reasonable request for further information from the Borough Council's Assessor, the Owner shall as soon as reasonably practicable and in any case within ten (10) Working Days (or such longer period as may be agreed between the Borough Council the Borough Council's Assessor and the Owner) of such request provide to the Borough Council the information requested whereupon the Borough Council shall confirm receipt of a valid Viability Assessment in writing (and such date shall be deemed the Validation Date) PROVIDED THAT
- 3.4.1 the Validation Date shall be deemed to have occurred within 5 (five) Working Days of the date the Owner provides the Borough Council's Assessor with the last of such further information as reasonably requested; and
- 3.4.2 the Borough Council's Assessor may only make a single request for further information (which single request may include requests for multiple items or information) and provided that the information supplied in response to the request has been both adequate and supplied in full with no omission by the Owner no subsequent request for further information may be made before the Validation Date shall be confirmed to have occurred (pursuant to a written notification by the Borough Council that it has received a valid Viability Assessment or the Validation Date shall be deemed to have occurred) and such single request from the Borough Council's Assessor must be received by the Owner within fifteen (15) Working Days of receipt by the Borough Council's Assessor of a Viability Assessment otherwise it shall be deemed that the Validation Date shall have occurred; and
- 3.4.3 in the event the Owner disputes the reasonableness of any part of a request for further information received from the Borough Council's Assessor it shall so advise the Borough Council and Borough Council's Assessor in writing and if the Owner and the Borough Council's Assessor cannot agree on whether such part of the request is reasonable and will be provided by the Owner then either party may refer the dispute to an Expert together with a request for the Expert to review the Viability Assessment and written statement referred to in paragraph 3.1 of this Part 2 in order to determine if an Early Viability Surplus or a Surplus has arisen and if the Surplus set out in the written statement is correctly calculated and where a Deferred Affordable Housing Scheme has been submitted that the application of the Surplus in the Deferred Affordable Housing Scheme is reasonable such that the Surplus has been fully applied.
- 3.5 The Owner acknowledges that during the course of negotiations pursuant to paragraph 4 of Part 2 of this Schedule the Borough Council's Assessor shall be entitled to seek such further information as either deemed relevant or reasonable to settle the Viability Review and/or the Deferred Affordable Housing Scheme and/or the Deferred Contributions with which the Owner shall comply as outlined in paragraph 3.4 above using all Reasonable Endeavours.
- 3.6 In the event the Borough Council's Assessor determines additional information is necessary to issue their final report to the Borough Council, then the Owner and/or the Borough Council (as applicable depending on which party has access or control to such relevant information) shall promptly submit such additional information to the Borough Council's Assessor and in any case within ten (10) Working Days (or such longer period as may be agreed in writing between the Borough Council the Owner) of such request.

#### 4. Viability Review

- 4.1 The Borough Council will notify the Owner in writing that the Borough Council's Assessor has completed a Viability Review and provide a copy of the relevant report of the Borough Council's Assessor to the Owner.
- 4.2 The Owner will pay to the Borough Council the costs of the Borough Council's Assessor which are reasonably and properly incurred on a Viability Review within 10 (ten) Working Days of receipt of the Borough Council's notification pursuant to paragraph 4.1 of this Part 2 of this Schedule of no more than £10,000 (ten thousand pounds) excluding VAT for each Viability Assessment received by the Borough Council's Assessor AND FOR THE AVOIDANCE OF DOUBT where more than one Viability Assessment is submitted to the Borough Council's Assessor in accordance with any of the triggers in paragraph 1 of this Part 2 the Borough Council may recover up to £10,000 (ten thousand pounds) in relation to the Viability Review of each and every one of the submitted Viability Assessments PROVIDED THAT request for provision of additional information in accordance with paragraph 3.4 or where such additional information necessitates the Viability Assessment previously submitted to the Borough Council's Assessor being rerun and submitted shall not trigger the ability to recover any additional sum up to £10,000 (ten thousand pounds).
- 4.3 For a period not exceeding 50 (fifty) Working Days commencing on the Validation Date (unless otherwise agreed between the parties) the Borough Council (or the Borough Council's Assessor) and the Owner will use Reasonable Endeavours to agree:
- 4.3.1 the Viability Assessment; and
  - 4.3.2 the Viability Review; and
  - 4.3.3 any Deferred Affordable Housing Scheme; and
  - 4.3.4 any Deferred Contributions.
- 4.4 In the event the Borough Council and the Owner are unable to agree within 50 (fifty) Working Days of the Validation Date whether:
- 4.4.1 an Early Viability Surplus or a Surplus has arisen;
  - 4.4.2 the Early Viability Surplus or Surplus set out in the written statement submitted pursuant to paragraph 3.1 of this Part 2 is correctly calculated; or
  - 4.4.3 where a Deferred Affordable Housing Scheme has been submitted that the application of the Surplus in the Deferred Affordable Housing Scheme is reasonable; and/or
  - 4.4.4 where Deferred Contributions are offered that the amounts are agreed
- then either party may refer the matter to dispute resolution (to be determined by the appropriate Expert) pursuant to clause 15.

## **5. Calculation and Application of Surplus**

5.1 100% (one hundred per cent) of any agreed or determined Early Viability Surplus OR 50% (fifty per cent) of any agreed or determined Surplus (together referred to as the Borough Council's Surplus) shall be applied in accordance with the following breakdown :

5.1.1 50% of the Borough Council's Surplus shall be applied to:

5.1.1.1 Deferred Affordable Housing Units and/or Deferred Contributions; and/or

5.1.1.2 Deferred Contributions; and/or

5.1.1.3 the proportional recovery, applicable to the Development, of any HIF Funding applied by the Council in respect of the HIF Funded Infrastructure Works, (where permitted under the terms of the GDA), for the delivery of housing and related infrastructure within its administrative area.

5.1.2 the remaining 50% of the Borough Council's Surplus may be applied to the Deferred Waste Contribution and/or the Deferred Swimming Contribution and/or a Deferred Affordable Housing Contribution.

PROVIDED THAT it is hereby acknowledged and agreed that (save for any element of a Surplus which is applied to Deferred Affordable Housing) in relation to the application of the Borough Council's Surplus in accordance with this paragraph 5.1 of this Part 2 of Schedule 2, any monies shall first be applied to the Deferred Waste Contribution, only following full payment of which, such monies may be applied to the Deferred Swimming Contribution and/or a Deferred Affordable Housing Contribution.

5.2 Any Surplus agreed or determined as part of a Viability Review of an Early Viability Assessment shall be 100% (one hundred per cent) recoverable by the Borough Council for application towards Deferred Affordable Housing Units and/or Deferred Contributions AND FOR THE AVOIDANCE OF DOUBT 50% of any Surplus agreed or determined as part of a Viability Review other than an Early Viability Assessment will be retained by the Owner.

5.3 In the event that any Surplus or Early Viability Surplus is a negative figure (i.e. a deficit) then (in respect of the relevant Viability Review and the Relevant Balance to which it relates only) no Deferred Affordable Housing Units or Deferred Contributions shall be required and the provisions of the remainder of the paragraphs in this Part 2 of this Schedule shall not apply AND FOR THE AVOIDANCE OF DOUBT where an Early Viability Surplus is a negative figure it shall not negate any obligations in respect of Viability Assessment 1 and/or Viability Assessment 2 where the Surplus is a positive figure and for which the remaining paragraphs of this Part 2 of Schedule 2 shall continue to have effect AND any Surplus which is a negative figure in respect of Viability Assessment 1 shall not negate the obligations in respect of Viability Assessment 2 for which the remaining paragraphs of this Part 2 of Schedule 2 shall continue to have effect should the Surplus for Viability Assessment 2 be a positive figure.

## **6. On Site Deferred Affordable Housing Units**

6.1 The Owner covenants to provide any Deferred Affordable Housing Units as may be required and agreed between the Parties (or determined by the Expert) as part of Viability Assessment 1 as part of the Development in accordance with the relevant agreed or determined Defe1rmd



Affordable Housing Scheme; and FOR THE AVOIDANCE OF DOUBT the obligations and covenants on the part of the Owner in relation to Affordable Housing Units in paragraphs 4, 5, 9, 11 and 12 of Part 1 of this Schedule 2 shall be applicable to the provision of the Deferred Affordable Housing Units and the provisions of paragraphs 1, 2, 3, 6, 7 and 9 shall not apply to any Affordable Housing Units provided as part of the Deferred Affordable Housing Units.

- 6.2 The Owner covenants to provide any Deferred Affordable Housing Units as may be required and agreed between the Parties (or determined by the Expert) as part of an Early Viability Assessment as part of the Development in accordance with the agreed or determined Deferred Affordable Housing Scheme; and FOR THE AVOIDANCE OF DOUBT the obligations and covenants on the part of the Owner in relation to Affordable Housing Units in paragraphs 4, 5, 9, 11 and 12 of Part 1 of this Schedule 2 shall be applicable to the provision of the Deferred Affordable Housing Units and the provisions of paragraphs 1, 2, 3, 6, 7 and 9 shall not apply to any Affordable Housing Units provided as part of the Deferred Affordable Housing Unit.

## **7. Deferred Contributions**

- 7.1 Subject to paragraph 7.2 below the Owner hereby covenants to pay to the Borough Council the value of any Deferred Contributions agreed or determined pursuant to this Part 2 of Schedule 2 as follows in relation to each individual Viability Review:

- 7.1.1 25% of the value of any Deferred Contributions within 20 (twenty) Working Days of such agreement or determination;
- 7.1.2 25% of the value of any Deferred Contributions:
- 7.1.2.1 in relation to any Viability Review undertaken pursuant to paragraph 1.1 of this Part 2 prior to Occupation of the 250th (two hundred and fiftieth) Residential Unit and not to Occupy more than 249 (two hundred and forty nine) Residential Units until such payment has been made;
- 7.1.2.2 in relation to the Viability Review undertaken pursuant to paragraph 1.2 of this Part 2 prior to the Occupation of the 500th (five hundredth) Residential Unit and not to Occupy more than 499 (four hundred and ninety nine) Residential Units until such payment has been made;
- 7.1.2.3 subject to the proviso at the end of paragraph 7.1.4, in relation to the Viability Review undertaken pursuant to paragraph 1.6 of this Part 2 prior to the Occupation of the 725th (seven and twenty fifth) Residential Unit and not to Occupy more than 724 (seven hundred and twenty four) Residential Units until such payment has been made.
- 7.1.3 25% of the value of any Deferred Contributions:
- 7.1.3.1 in relation to any Viability Review undertaken pursuant to paragraph 1.1 of this Part 2 prior to Occupation of the 400th (four hundredth) Residential Unit and not to Occupy more than 399 (three hundred and ninety nine) Residential Units until such payment has been made;

- 7.1.3.2 in relation to the Viability Review undertaken pursuant to paragraph 1.2 of this Part 2 prior to the Occupation of the 550th (five hundred and fiftieth) Residential Unit and not to Occupy more than 549 (five hundred and forty nine) Residential Units until such payment has been made;
- 7.1.3.3 in relation to the Viability Review undertaken pursuant to paragraph 1.6 of this Part 2 prior to the Occupation of the 750th (seven hundred and fiftieth) Residential Unit and not to Occupy more than 749 (seven hundred and forty nine) Residential Units until such payment has been made.
- 7.1.4 25% of the value of any Deferred Contributions:
  - 7.1.4.1 in relation to any Viability Review undertaken pursuant to paragraph 1.1 of this Part 2 prior to Occupation of the 575<sup>th</sup> Residential Unit and not to Occupy more than 574 Residential Units until such payment has been made;
  - 7.1.4.2 in relation to the Viability Review undertaken pursuant to paragraph 1.2 of this Part 2 prior to the Occupation of the 600<sup>th</sup> (six hundredth) Residential Unit and not to Occupy more than 599 (five hundred and ninety nine) Residential Units until such payment has been made;
  - 7.1.4.3 in relation to the Viability Review undertaken pursuant to paragraph 1.6 of this Part 2 prior to the Occupation of the 775<sup>th</sup> (seven hundred and seventy fifth) Residential Unit and not to Occupy more than 774 (seven hundred and seventy four) Residential Units until such payment has been made.

PROVIDED THAT in relation to the obligation to pay in accordance with paragraph 7.1.2.3 of this Part 2, if at the date the payment becomes due the Surplus and any Deferred Contributions have not been agreed or determined, then the payment shall instead be made on the earlier of either 20 (twenty) Working Days after the date any such Surplus and Deferred Contributions have been agreed or determined, or prior to Occupation of the 750<sup>th</sup> (seven hundred and fiftieth) Residential Unit and the Owners shall not Occupy more than 749 (seven hundred and forty nine) Residential Units until such payment has been made.

- 7.2 If the amount of any Deferred Contributions agreed or determined as part of a Viability Review undertaken in accordance with this Deed is £100,000 (one hundred thousand pounds) or less the Owners shall pay such Deferred Contributions in a single instalment in accordance with the following provisions:
  - 7.2.1 in relation to any Deferred Contributions payable pursuant to a Viability Assessment submitted in accordance with paragraph 1.1 of this Part 2 of Schedule 2 (and any subsequent Viability Review) by Occupation of the 250<sup>th</sup> (two hundred and fiftieth) Residential Unit and the Owners shall not Occupy more than 249 (two hundred and forty nine) Residential Units until such payment has been made; and
  - 7.2.2 in relation to any Deferred Contributions payable pursuant to a Viability Assessment submitted in accordance with paragraph 1.2 of this Part 2 of

Schedule 2 (and any subsequent Viability Review) by Occupation of the 500<sup>th</sup> (five hundredth) Residential Unit and the Owners shall not Occupy more than 499 (four hundred and ninety nine) Residential Units until such payment has been made; and

in relation to any Deferred Contributions payable pursuant to a Viability Assessment submitted in accordance with paragraph 1.6 of this Part 2 of Schedule 2 (and any subsequent Viability Review) by Occupation of the 725<sup>th</sup> (seven hundred and twenty fifth) Residential Unit and the Owners shall not Occupy more than 724 (seven hundred and twenty four) Residential Units until such payment has been made.

## SCHEDULE 3: EDUCATION

### Part 1: Primary School Site

The Owner covenants with the County Council as follows:

1. Prior to the Occupation of the 50<sup>th</sup> (fiftieth) Residential Unit:
  - 1.1 to identify the proposed Primary School Site and to submit details of the proposed Primary School Site and details of the proposed location of highway access (or accesses) (including any temporary access) to the Primary School Site and the services and proposed location of such services, to the County Council for approval in writing; and
  - 1.2 to pay the Primary School Design Fee to the County Council.
2. Not to Occupy or permit or allow Occupation of more than 49 (forty nine) Residential Units unless and until the Owner has complied with paragraph 1 of this Part 1 of this Schedule 3 and the County Council has received the Primary School Design Fee and has approved in writing:
  - 2.1 the details of the Primary School Site (hereafter "**the Approved Primary School Site**");
  - 2.2 the details of the location of highway access (or accesses) (including any temporary access) to the Primary School Site (hereafter "**the Approved Highway Accesses**"); and
  - 2.3 the details of services and location of such services including gas, electricity, water, foul drainage, surface water drainage and ducting for telecommunications (hereafter "**the Approved Services**").

PROVIDED THAT if any details submitted pursuant to this paragraph 2 of this Part 1 of this Schedule 3 have not been approved or rejected within 30 (thirty) Working Days of submission then they shall be deemed to have been approved.

3. To use the Approved Primary School Site for the provision of the Primary School and Early Years Setting and not to use or permit or allow the use of the Approved Primary School Site for any purpose other than the provision of the Primary School and Early Years Setting (including any appropriate community uses complimentary to its use as a Primary School and Early Years Setting) save that the Approved Primary School Site may be used for temporary construction facilities relating to the Development PROVIDED THAT if the Approved Primary School Site is used for temporary construction facilities relating to the Development the Owner shall clean up and make good the Approved Primary School Site, including but not limited to any compaction of the Approved Primary School Site as a result of its use for temporary construction facilities, prior to transferring the Approved Primary School Site to the County Council in accordance with this Deed;
4. Immediate ly prior to the transfer of the Approved Primary School Site in accordance with paragraphs 5 and 6 of this Part 1 of Schedule 3, the Owner shall ensure:
  - 4.1 the Approved Primary School Site is financially unencumbered and in relation to other encumbrances that no encumbrances exist other than those on the title at the date of this Deed or those necessary for the use and servicing of the Development on the remainder of the Site or otherwise which the County Council shall have first (acting reasonably) approved in writing; and

- 4.2 the Approved Primary School Site is free from contamination (including invasive species) which would prevent the use of the Approved Primary School Site as a primary school with or without early years' provision and ancillary facilities; and
- 4.3 all necessary archaeological surveys and ecological mitigation shall have been completed on the Approved Primary School Site; and
- 4.4 the Approved Primary School Site is free of any services and/or service media in, on or under the Approved Primary School Site, subject to paragraph 6 below, save for the Approved Services required to be provided in accordance with paragraph 8 or 9 of this Part 1 of Schedule 3; and
5. Prior to the Occupation of the 200<sup>th</sup> (two hundredth) Residential Unit to deliver a duly executed Primary School Site Transfer for the Approved Primary School Site in the same condition as set out at paragraph 4 of this Part 1 of Schedule 3 and on the terms set out at paragraph 6 of this Part 1 of Schedule 3 to the County Council in exchange for consideration not exceeding in total the sum of one pound sterling (£1) PROVIDED THAT if the details submitted pursuant to paragraph 1.1 of this Part 1 have not been approved within 30 (thirty) Working Days of submission the date for transfer shall instead be delayed to a date to be agreed between the parties to enable at least nine (9) months between approval or deemed approval of the details and the date for transfer of the Approved Primary School Site;
6. The Primary School Site Transfer shall include the following terms:
  - 6.1.1 the Approved Primary School Site shall be transferred with full title guarantee free from financial encumbrances and in relation to other encumbrances that no encumbrances exist other than those on the title at the date of this Deed or those necessary for the use and servicing of the Development on the remainder of the Site or otherwise which the County Council shall have first (acting reasonably) approved in writing and transferred for the sum of one pound (£1.00);
  - 6.1.2 the County Council's reasonable costs in respect of the Primary School Site Transfer shall be borne by the Owner;
  - 6.1.3 reserve all necessary rights of access (pedestrian and vehicular) drainage and services (subject to the grant of satisfactory planning permission and provision of mains services by statutory undertakers and or utility companies) across the Primary School Site;
  - 6.1.4 rights of access for the Owner to enable compliance with the obligations in paragraph 9 of this Schedule 3 in the event that the County Council serves a Primary School Anticipated Commencement Notice pursuant to paragraph 15.7 of Schedule 16.
7. Not to Occupy or permit or allow Occupation of more than 199 (one hundred and ninety nine) Residential Units unless and until the Primary School Site Transfer has been duly executed and delivered to the County Council;

8. In the event that the County Council notifies the Owner pursuant to paragraph 15.6 of Schedule 16, then the Owner shall prior to the date of transfer of the Primary School Site lay out, construct and complete, at its own expense, and at no cost to the County Council
  - 8.1.1 the Approved Highway Accesses or temporary access as appropriate to the Primary School Site to base course level to the reasonable satisfaction of the County Council (and at least to adoptable standard); and
  - 8.1.2 the Approved Services to be provided to the Primary School Site within one (1) metre inside the Primary School Site boundary
  
9. In the event that the County Council serves the Primary School Anticipated Commencement Notice pursuant to paragraph 15.7 of Schedule 16 the Owner shall no later than 9 (nine) months after the date of receipt of service of the Primary School Anticipated Commencement Notice lay out, construct and complete, at its own expense, and at no cost to the County Council:
  - 9.1.1 the Approved Highway Accesses or temporary accesses as appropriate to the Primary School Site to base course level to the reasonable satisfaction of the County Council (and at least to adoptable standard); and
  - 9.1.2 the Approved Services to be provided to the Primary School Site within one (1) metre inside the Primary School Site boundary.
  
10. To make the road connecting the Primary School Site to Westerfield Road up to Part 2 Certificate adoptable standard prior to the Primary School being opened to pupils unless otherwise agreed in writing by the County Council.

## **Part 2: Primary Education Contribution**

1. To pay the first instalment of the Primary Education Contribution in the sum of £1,132,857 (one million, one hundred and thirty two thousand, eight hundred and fifty seven pounds) Index Linked to the County Council prior to the first Occupation of the 300<sup>th</sup> Residential Unit.
2. Not to Occupy or permit or allow Occupation of more than 299 (two hundred and ninety nine) Residential Units unless and until the first instalment of the Primary Education Contribution in the sum of £1,132,857 (one million, one hundred and thirty two thousand, eight hundred and fifty seven pounds) Index Linked has been paid to the County Council.
3. To pay the second instalment of the Primary Education Contribution in the sum of £1,132,857 (one million, one hundred and thirty two thousand, eight hundred and fifty seven pounds) Index Linked to the County Council prior to the first Occupation of the 500<sup>th</sup> Residential Unit.
4. Not to Occupy or permit or allow Occupation of more than 499 (four hundred and ninety nine) Residential Units unless and until the second instalment of the Primary Education Contribution in the sum of £1,132,857 (one million, one hundred and thirty two thousand, eight hundred and fifty seven pounds) Index Linked has been paid to the County Council.
5. To pay the third instalment of the Primary Education Contribution in the sum of £1,132,857 (one million, one hundred and thirty two thousand, eight hundred and fifty seven pounds) Index Linked to the County Council prior to the first Occupation of the 700<sup>th</sup> Residential Unit.
6. Not to Occupy or permit or allow Occupation of more than 699 (six hundred and ninety nine) Residential Units unless and until the third instalment of the Primary Education Contribution

in the sum of £1,132,857 (one million, one hundred and thirty two thousand, eight hundred and fifty seven pounds) Index Linked has been paid to the County Council.

### **Part 3: Early Years Contribution**

1. To pay the first instalment of the Early Years Contribution in the sum of £196,893 (One hundred and ninety six thousand, eight hundred and ninety three) Index Linked to the County Council prior to the first Occupation of the 300<sup>th</sup> Residential Unit
2. Not to Occupy or permit or allow Occupation of more than 299 (two hundred and ninety nine) Residential Units unless and until the first instalment of the Early Years Contribution in the sum of £196,893 (One hundred and ninety six thousand, eight hundred and ninety three) Index Linked has been paid to the County Council.
3. To pay the second instalment of the Early Years Contribution in the sum of £196,893 (One hundred and ninety six thousand, eight hundred and ninety three) Index Linked to the County Council prior to the first Occupation of the 500<sup>th</sup> Residential Unit.
4. Not to Occupy or permit or allow Occupation of more than 499 (four hundred and ninety nine) Residential Units unless and until the second instalment of the Early Years Contribution in the sum of £196,893 (One hundred and ninety six thousand, eight hundred and ninety three) Index Linked has been paid to the County Council.
5. To pay the third instalment of the Early Years Contribution in the sum of £196,893 (One hundred and ninety six thousand, eight hundred and ninety three) Index Linked to the County Council prior to the first Occupation of the 700<sup>th</sup> Residential Unit.
6. Not to Occupy or pennit or allow Occupation of more than 699 (six hundred and ninety nine) Residential Units unless and until the third instalment of the Early Years Contribution in the sum of £196,893 (One hundred and ninety six thousand, eight hundred and ninety three) Index Linked has been paid to the County Council.

### **Part 4: Secondary Education Contribution**

1. To pay to the County Council the Secondary School Design Fee prior to the Occupation of the 50<sup>th</sup> (fiftieth) Residential Unit;
2. Not to Occupy or permit or allow Occupation of more than 49 (forty nine) Residential Units unless and until the Secondary School Design Fee has been paid in full to the County Council;
3. To pay to the County Council the first instalment of the Secondary Education Contribution in the sum of £916,128.70 (nine hundred and sixteen thousand and one hundred and twenty eight pounds seventy pence) Index Linked to the County Council prior to the first Occupation of the 300<sup>th</sup> Residential Unit.
4. Not to Occupy or permit or allow Occupation of more than 299 (two hundred and ninety nine) Residential Units unless and until the first instalment of the Secondary Education Contribution in the sum of £916,128.70 (nine hundred and sixteen thousand and one hundred and twenty eight pounds seventy pence) Index Linked has been paid to the County Council.
5. To pay the second instalment of the Secondary Education Contribution in the sum of £916,128.70 (nine hundred and sixteen thousand and one hundred and twenty eight pounds

seventy pence) Index Linked to the County Council prior to the first Occupation of the 500<sup>th</sup> Residential Unit.

6. Not to Occupy or permit or allow Occupation of more than 499 (four hundred and ninety nine) Residential Units unless and until the second instalment of the Secondary Education Contribution in the sum of £916,128.70 (nine hundred and sixteen thousand and one hundred and twenty eight pounds seventy pence) Index Linked has been paid to the County Council.
7. To pay the third instalment of the Secondary Education Contribution in the sum of £916,128.70 (nine hundred and sixteen thousand and one hundred and twenty eight pounds seventy pence) Index Linked to the County Council prior to the first Occupation of the 700<sup>th</sup> Residential Unit.
8. Not to Occupy or permit or allow Occupation of more than 699 (six hundred and ninety nine) Residential Units unless and until the third instalment of the Secondary Education Contribution in the sum of £916,128.70 (nine hundred and sixteen thousand and one hundred and twenty eight pounds seventy pence) Index Linked has been paid to the County Council.



### **Part 5: Sixth Form Education Contribution**

1. To pay the first instalment of the Sixth Form Education Contribution in the sum of £216,323 (two hundred and sixteen thousand, three hundred and twenty three pounds) Index Linked to the County Council prior to the first Occupation of the 300<sup>th</sup> Residential Unit.
2. Not to Occupy or permit or allow Occupation of more than 299 (two hundred and ninety nine) Residential Units unless and until the first instalment of the Sixth Form Education Contribution in the sum of £216,323 (two hundred and sixteen thousand, three hundred and twenty three pounds) Index Linked has been paid to the County Council.
3. To pay the second instalment of the Sixth Form Education Contribution in the sum of £216,323 (two hundred and sixteen thousand, three hundred and twenty three pounds) Index Linked to the County Council prior to the first Occupation of the 500<sup>th</sup> Residential Unit.
4. Not to Occupy or permit or allow Occupation of more than 499 (four hundred and ninety nine) Residential Units unless and until the second instalment of the Sixth Form Education Contribution in the sum of £216,323 (two hundred and sixteen thousand, three hundred and twenty three pounds) Index Linked has been paid to the County Council.
5. To pay the third instalment of the Sixth Form Education Contribution in the sum of £216,323 (two hundred and sixteen thousand, three hundred and twenty three pounds) Index Linked to the County Council prior to the first Occupation of the 700<sup>th</sup> Residential Unit.
6. Not to Occupy or permit or allow Occupation of more than 699 (six hundred and ninety nine) Residential Units unless and until the third instalment of the Sixth Form Education Contribution in the sum of £216,323 (two hundred and sixteen thousand, three hundred and twenty three pounds) Index Linked has been paid to the County Council.

### **Part 6: Multi-Use Games Area Contribution**

1. To pay to the County Council the Multi-Use Games Area Contribution prior to the first Occupation of the 500<sup>th</sup> Residential Unit.
2. Not to Occupy or permit Occupation of more than 499 Residential Units unless and until the Multi-Use Games Area Contribution has been paid in full to the County Council.

## SCHEDULE 4: HIGHWAYS AND TRANSPORT

The Owner covenants with the County Council as follows:

- 1. Both the Vehicular Railway Bridge and the Pedestrian and Cycle Railway Bridge**
  - 1.1 From the date of the grant of the Planning Permission for a period of fifteen (15) years, the Owner shall set aside the Vehicular Railway Bridge Land and the Pedestrian and Cycle Railway Bridge Land.
  - 1.2 That it has granted any and all rights of access and services (for the benefit of the Northern Land Owner and/or the Northern Land and its contractors, employees, equipment and materials) for a licence over the Vehicular Railway Bridge Land and the Pedestrian and Cycle Railway Bridge Land and any rights which are reasonably necessary to allow the Northern Land Owner to construct and maintain the Pedestrian and Cycle Railway Bridge and the Vehicular Railway Bridge until the adoption respectively of the Pedestrian and Cycle Railway Bridge and the Vehicular Railway Bridge by the County Council including installing temporary service media to service and connect to any facilities for the construction of either the Pedestrian and Cycle Railway Bridge and/or the Vehicular Railway Bridge and will use Reasonable Endeavours to grant any further rights of access and services as may be reasonably necessary and as are notified to the Owner by the Northern Land Owner.
  - 1.3 To provide to the Borough Council and the County Council a copy of the documents granting such rights of access and services as set out in paragraph 1.2 of this Schedule 4 and to provide a copy of any further documentation within 20 (twenty) Working Days of the grant of any such further rights and not to carry out any development on the Site pursuant to section 56 of the 1990 Act until access for construction and maintenance purposes has been granted to the Northern Land Owner.
  - 1.4 To allow the Northern Land Owner to construct and maintain the Pedestrian and Cycle Railway Bridge and the Vehicular Railway Bridge on the Vehicular Railway Bridge Land and the Pedestrian and Cycle Railway Bridge Land until the adoption respectively of the Pedestrian and Cycle Railway Bridge and Vehicular Railway Bridge by the County Council.
  - 1.5 If the safeguarding period in paragraph 1.1 above has expired then the obligations at paragraph 1.1 shall no longer be applicable and the Owner shall (subject to obtaining the necessary planning consents) be entitled to use the Vehicular Railway Bridge Land and/or the Pedestrian and Cycle Railway Bridge Land for alternative purposes.
- 2. Vehicular Railway Bridge Highway Link**
  - 2.1 Prior to completion of the Vehicular Railway Bridge to construct a Vehicular Railway Bridge Highway Link PROVIDED THAT written notice of not less than 6 (six) months of the estimated Completion of the Vehicular Railway Bridge is given to the Owner by the Northern Land Owner pursuant to paragraph 1.9 of Part 1 of Schedule 4 of the Northern Land Obligation. Where less than 6 (six) months' notice of the estimated Completion of the Vehicular Railway Bridge is given then the Owner shall construct the Vehicular Railway Bridge Highway Link within 6 months of receipt of the notice ;
  - 2.2 Subject to a Section 38 Agreement having been entered into for the Vehicular Railway Bridge to dedicate the land within the Site that has been used for the Vehicular Railway Bridge to the County Council for the County Council to maintain the Vehicular- Railway Bridge as public highway such dedication to occur:

2.2.1 within 3 (three) months of Practical Completion of the Vehicular Railway Bridge;  
or

2.2.2 where the County Council requires the Vehicular Railway Bridge to be adopted and by the date that is 3 (three) months after Practical Completion of the Vehicular Railway Bridge the Vehicular Railway Bridge Highway Link is not ready to be dedicated as a public highway in accordance with paragraph 2.3 of this Schedule 4 then the dedication of the Vehicular Railway Bridge shall be delayed until such time as the Vehicular Railway Bridge Highway Link is also able to be dedicated as public highway

PROVIDED THAT no liability and/or obligations shall be imposed upon the Owner under such Section 38 Agreement other than a requirement to dedicate the land upon which the Vehicular Railway Bridge is to be constructed and to be responsible for its own costs incurred in entering into such Section 38 Agreement;

2.3 Following Practical Completion of the Vehicular Railway Bridge Highway Link at its own cost in accordance with the specification shown on Drawing Number VD19107 SK101 Rev A to enter into an agreement with the County Council made pursuant to section 25 of the 1980 Act (or such other powers as the County Council considers appropriate) to dedicate the land within the Site that has been used for the Vehicular Railway Bridge Highway Link as a public pathway and such agreement shall make provision for the Owner to maintain and where necessary repair the Vehicular Railway Bridge Highway Link at its own cost:

2.3.1 until if at the Owner's election the Vehicular Railway Bridge Highway Link is adopted by the County Council; or

2.3.2 until the Vehicular Railway Bridge Highway Link becomes part of the estate road network within the Site following which the wider maintenance arrangements will apply to the Vehicular Railway Bridge Highway Link or the highway which replaces it; or

2.3.3 in perpetuity if the Vehicular Railway Bridge Highway Link does not become part of the estate road network and is used by the public for the lifetime of the Development.

2.4 to allow public access on foot, bicycle and motorised vehicles (each as where appropriate) for the lifetime of the Development on the Vehicular Railway Bridge and the Vehicular Railway Bridge Highway Link until in the case of the Vehicular Railway Bridge adoption by the County Council PROVIDED THAT where 14 (fourteen) days written notice is provided to the County Council in advance (save in the case of an emergency or potential breach of health and safety) there may be closure and/or prevention of public use or access to the Vehicular Railway Bridge and/or the Vehicular Railway Bridge Highway Link:

2.4.1 for the maintenance, repair, renewal, cleaning or other required works to the Vehicular Railway Bridge or the Vehicular Railway Bridge Highway Link;

2.4.2 for the laying, construction, inspection, maintenance, repair or renewal or cleaning of any building or buildings or any services or service media serving such building or buildings now or hereafter on the land adjoining the Vehicular Railway Bridge or the Vehicular Railway Bridge Highway Link or any part thereof (including the erection of scaffolding);

- 2.4.3 in cases of emergency or danger to the public;
- 2.4.4 in the interests of security;
- 2.4.5 for any other sufficient cause approved by the County Council;
- 2.4.6 for the maintenance, repair, renewal, cleaning or other required works to the Development abutting the Vehicular Railway Bridge or the Vehicular Railway Bridge Highway Link (including structural or non-structural works and/or alterations).

### **3. The Pedestrian and Cycle Railway Bridge**

- 3.1 Subject to a Section 38 Agreement having been entered into for the Pedestrian and Cycle Railway Bridge to dedicate the land within the Site that has been used for the Pedestrian and Cycle Railway Bridge to the County Council for the County Council to maintain the Pedestrian and Cycle Railway Bridge as public highway; such dedication to occur within 3 (three) months of Practical Completion of the Pedestrian and Cycle Railway Bridge PROVIDED THAT no liability and/or obligations shall be imposed upon the Owner under such Section 38 Agreement other than a requirement to dedicate the land upon which the Pedestrian and Cycle Railway Bridge has been constructed and to be responsible for its own costs incurred in entering into such Section 38 Agreement and the obligation at paragraph 3.2 below;
- 3.2 If the Pedestrian and Cycle Railway Bridge has not been adopted by the County Council and the County Council serves notice in writing on the Owner at any time following Completion of the Pedestrian and Cycle Railway Bridge to pay the Pedestrian and Cycle Railway Bridge Maintenance Payment to the County Council within 20 (twenty) Working Days of receipt of a written request from the County Council for such payment which shall be held by the County Council in the Pedestrian and Cycle Railway Bridge Escrow Account PROVIDED THAT such requests may be made at any time and multiple requests may be made following completion of the Pedestrian and Cycle Railway Bridge subject always to the caps set out in the definition of Pedestrian and Cycle Railway Bridge Maintenance Payment.

### **4. Temporary Footpath Diversion**

- 4.1 Within three (3) months of the date either the Owner or the Northern Land Owner provides written notice to the other that either (acting reasonably) wishes to implement the Temporary Diversion Framework the party that serves such notice shall submit it to the County Council and the Borough Council for approval in writing a detailed temporary diversion strategy such details to be in accordance with the principles of the Temporary Diversion Framework and for the purposes of this paragraph 4 the document once approved shall be referred to as the "**Temporary Diversion Strategy**";
- 4.2 Following approval of the Temporary Diversion Strategy by the County Council and the Borough Council the party which served notice pursuant to paragraph 4.1 shall at its own expense apply for any necessary consents (whether required by statute or otherwise) to close temporarily FP18 between the points marked X1 and X2 on the Temporary Diversion Strategy Drawing and until such time as the approved Temporary Diversion Strategy has been implemented and the Temporary Diversion Route is completed and open to members of the public, the Owner shall not Occupy more than 499 (four hundred and ninety nine) Residential Units;

- 4.3 Within 3 (three) months of the date that that all necessary consents to close temporarily FP18 (as set out in paragraph 4.2) are granted the Owner shall (at its own expense);
- 4.3.1 provide such signage and information boards marked indicatively in the locations shown on the Temporary Diversion Strategy Drawing or as may be set out in the necessary consents on the Site and on the Northern Temporary Pedestrian Footpath Land; and
- 4.3.2 erect barriers (the specification of which shall be agreed in writing with the County Council) at the points identified on Temporary Diversion Strategy Drawing as X1 and X2 (or such other location as may be agreed in writing with the County Council or set out in the necessary consents) in order that FPI 8 is temporarily closed and the public are redirected away from the Westfield FPS Crossing so that they use the Temporary Diversion Route and give to the Northern Land Owner, the County Council and the Borough Council notice of the same;
- 4.3.3 construct that part of the new footpath link shown indicatively on the Temporary Diversion Strategy Drawing as pink dashed lines so as to join into the existing track which is shown on the Temporary Diversion Strategy Drawing as blue dashed lines (together referred to as the "**New Proposed Footpath Link**") on the Northern Temporary Pedestrian Footpath Land in accordance with the specification shown on the Temporary Diversion Strategy Drawing or otherwise in accordance with any necessary consents;
- 4.3.4 carry out any and all necessary improvement and/or upgrade works to the New Proposed Footpath Link so that it is clear, safe and suitable for use by all those living and/or working within the Development and for general public use;
- 4.3.5 for the duration that the Temporary Diversion Route is in place in accordance with the Temporary Diversion Strategy, to carry out regular and necessary maintenance works to that part of the Temporary Diversion Route that is within the Site (including maintenance of any signs, information boards and barriers) to ensure its uninterrupted use by those living and/or working within the Development and for general public use; and
- 4.3.6 in the event that the approved Temporary Diversion Strategy requires the construction of the Alternative Diversion Route then to construct the Alternative Diversion Route in accordance with the specification shown on the Temporary Diversion Strategy Drawing or otherwise in accordance with any necessary consents and to ensure that the Alternative Diversion Route is clear, safe and suitable for uninterrupted use by all those living and/or working within the Development and general public use.
- 4.4 Until such time as the Pedestrian and Cycle Railway Bridge is completed and open to members of the public and in the event the Owner has not carried out the actions required by paragraphs 4.3.1 to 4.3.5 inclusive (and if applicable 4.3.6) in accordance with the Temporary Diversion Strategy within the time periods referred to at 4.1 and 4.3 above to allow the Northern Land Owner access to that part of the Site as is reasonably necessary in order that the Northern Land Owner (at the Owner's expense) may carry out the same and FOR THE AVOIDANCE OF DOUBT if the Alternative Diversion Route is to be provided pursuant to the Temporary Diversion Strategy the Northern Land Owner shall be permitted access to that part of the Site within which the Alternative Diversion Route is to be located to carry out the same

- 4.5 In the event that the Pedestrian and Cycle Railway Bridge has not been Practically Completed to an adoptable standard not to Occupy or permit Occupation of more than 500 (five hundred) Residential Units on the Site unless the Temporary Diversion Route has been provided in accordance with the Temporary Diversion Strategy PROVIDED THAT FOR THE AVOIDANCE OF DOUBT if the Temporary Diversion Strategy has been implemented and FP18 is subsequently reinstated pursuant to paragraph 4.7 the County Council and the Borough Council acknowledge and agree that the Owner shall not be in breach of this paragraph 4.5 if up to 699 Residential Units are Occupied when the Temporary Diversion Route is not in place and FP18 is reinstated.
- 4.6 No to Occupy or permit Occupation of more than 700 (seven hundred) Residential Units on the Site until the Pedestrian and Cycle Railway Bridge has been constructed and is Practically Complete to an adoptable standard.
- 4.7 In the event that:
- 4.7.1 the Temporary Diversion Strategy is implemented pursuant to para 4.3 of this Schedule 4 or pursuant to a Northern Land Obligation; and
- 4.7.2 the Pedestrian and Cycle Railway Bridge has not been Practically Completed
- the Owner shall, at its own expense, take such steps as are necessary to reinstate FP18 between the points marked XI and X2 on the Temporary Diversion Strategy Drawing to the County Council's and Borough Council's reasonable satisfaction before the expiry of 5 (five) years from the date that FP18 is closed between the points marked X1 and X2 pursuant to paragraph 4.3.2,
- 4.8 The Parties to this Deed hereby acknowledge and agree that the costs of the Temporary Diversion Strategy (including but not limited to the costs of designing, constructing, implementing, procuring and/or maintaining the strategy), shall not be included in any Viability Assessment submitted in accordance with Part 2 of Schedule 2 to this Deed.

## **5. Off Site Sustainable Transport Contribution**

- 5.1 To pay the first instalment of the Off Site Sustainable Transport Contribution in the sum of £67,935.98 (sixty seven thousand nine hundred and thirty five pounds and ninety eight pence) Index Linked to the County Council prior to the first Occupation of the fiftieth (50th) Residential Unit;
- 5.2 Not to Occupy or permit or allow Occupation of more than forty nine (49) Residential Units unless and until the first instalment of the Off Site Sustainable Transport Contribution in the sum of £67,935.98 (sixty seven thousand nine hundred and thirty five pounds and ninety eight pence) Index Linked has been paid to the County Council;
- 5.3 To pay the second instalment of the Off Site Sustainable Transport Contribution in the sum of £67,935.98 (sixty seven thousand nine hundred and thirty five pounds and ninety eight pence) Index Linked to the County Council prior to the first Occupation of the two hundredth (200<sup>th</sup>) Residential Unit;
- 5.4 Not to Occupy or permit or allow Occupation of more than 199 (one hundred and ninety - nine) Residential Units unless and until the second instalment of the Off Site Sustainable Transport Contribution in the sum of £67,935.98 (sixty seven thousand nine hundred and thirty five pounds and ninety eight pence) Index Linked has been paid to the County Council;

- 5.5 To pay the third instalment of the Off Site Sustainable Transport Contribution in the sum of £67,935.98 (sixty seven thousand nine hundred and thirty five pounds and ninety eight pence) Index Linked to the County Council prior to the first Occupation of the five hundredth (500<sup>th</sup>) Residential Unit;
- 5.6 Not to Occupy or pennit or allow Occupation of more than 499 (four hundred and ninety- nine) Residential Units unless and until the third instalment of the Off Site Sustainable Transport Contribution in the sum of £67,935.98 (sixty seven thousand nine hundred and thirty five pounds and ninety eight pence) Index Linked has been paid to the County Council.

**6. Bus Services Contribution**

- 6.1 To pay the first instalment of the Bus Services Contribution in the sum of £112,062.50 (one hundred and twelve thousand and sixty two pounds and fifty pence) Index Linked prior to Occupation of the 100<sup>th</sup> (one hundredth) Residential Unit;
- 6.2 Not to Occupy or permit or allow Occupation of more than 99 (ninety nine) Residential Units unless and until the first instalment of the Bus Services Contribution in the sum of £112,062.50 (one hundred and twelve thousand and sixty two pounds and fifty pence) Index Linked has been paid to the County Council;
- 6.3 To pay the second instahnent of the Bus Services Contribution in the sum of £112,062.50 (one hundred and twelve thousand and sixty two pounds and fifty pence) Index Linked prior to Occupation of the 300<sup>th</sup> (three hundredth) Residential Unit;
- 6.4 Not to Occupy or permit or allow Occupation of more than 299 (two hundred and ninety nine) Residential Units unless and unti l the second instalment of the Bus Services Contribution in the sum of £112,062.50 (one hundred and twelve thousand and sixty two pounds and fifty pence) Index Linked has been paid to the County Council;
- 6.5 To pay the third instalment of the Bus Services Contribution in the sum of £112,062.50 (one hundred and twelve thousand and sixty two pounds and fifty pence) Index Linked prior to Occupation of the 500<sup>th</sup> (five hundredth) Residential Unit;
- 6.6 Not to Occupy or pennit or allow Occupation of more than 499 (four hundred and ninety nine) Residential Units unless and until the third instalment of the Bus Services Contribution in the sum of £112,062 .50 (one hundred and twelve thousand and sixty two pounds and fifty pence) Index Linked has been paid to the County Council;
- 6.7 To pay the fourth instahnent of the Bus Services Contribution in the sum of £112,062.50 (one hundred and twelve thousand and sixty two pounds and fifty pence) Index Linked prior to Occupation of the 700<sup>th</sup> (seven hundredth) Residential Unit;
- 6.8 Not to Occupy or permit or allow Occupation of more than 699 (six hundred and ninety nine) Residential Units unless and until the fomth instalment of the Bus Services Contribution in the sum of £112,062.50 (one hundred and twelve thousand and sixty two pounds and fifty pence) Index Linked has been paid to the County Council;

**7. Bus Stop Improvements Contribution**

- 7.1 To pay the Bus Stop Improvements Contribution to the County Council prior to the first Occupation of the fiftieth (50<sup>th</sup>) Residential Unit.

7.2 Not to Occupy or permit or allow Occupation of more than 49 (forty nine) Residential Units unless and until the Bus Stop Improvements Contribution has been paid in full to the County Council.

#### **8. Public Rights of Way Contribution**

8.1 To pay the first instalment of the Public Rights of Way Contribution in the sum of £45,637.96 (forty five thousand six hundred and thirty seven pounds and ninety six pence) Index Linked to the County Council prior to the first Occupation of the forty ninth (49<sup>th</sup>) Residential Unit.

8.2 Not to Occupy or permit or allow Occupation of the fiftieth (50<sup>th</sup>) Residential Unit unless and until the first instalment of the Public Rights of Way Contribution in the sum of £45,637.96 (forty five thousand six hundred and thirty seven pounds and ninety six pence) Index Linked has been paid to the County Council.

8.3 To pay the second instalment of the Public Rights of Way Contribution in the sum of £45,637.96 (forty five thousand six hundred and thirty seven pounds and ninety six pence) Index Linked to the County Council prior to the first Occupation of the 200<sup>th</sup> (two hundredth) Residential Unit.

8.4 Not to Occupy or permit or allow Occupation of more than 199 (one hundred and ninety nine) Residential Units unless and until the second instalment of the Public Rights of Way Contribution in the sum of £45,637.96 (forty five thousand six hundred and thirty seven pounds and ninety six pence) Index Linked has been paid to the County Council.

#### **9. Travel Plans Evaluation and Support Contribution**

9.1 To pay the first instalment of the Travel Plans Evaluation and Support Contribution of £1,000 (one thousand pounds) prior to the first Occupation of the 100<sup>th</sup> (one hundredth) Residential Unit.

9.2 Not to Occupy or allow or permit Occupation of more than 99 (ninety nine) Residential Units unless and until the first instalment of the Travel Plans Evaluation and Support Contribution of £1,000 (one thousand pounds) has been paid to the County Council.

9.3 To pay further instalments of the Travel Plans Evaluation and Support Contribution of £1,000 (one thousand pounds) annually on the anniversary of the date of first Occupation of the 100<sup>th</sup> (one hundredth) Residential Unit until the anniversary of the date of the Occupation of the final Residential Unit to be Occupied SAVE THAT notwithstanding the provisions in this paragraph 9.3 no more than £14,000 (fourteen thousand pounds) shall be paid by the Owner by way of instalments of the Travel Plans Evaluation and Support Contribution.

#### **10. Travel Plans Implementation Bond**

10.1 To enter into the Travel Plans Implementation Bond and provide a copy of the Travel Plans Implementation Bond to the County Council prior to the first Occupation of more than 100 Residential Units on the Development.

10.2 Not to Occupy or permit or allow the Occupation of more than 99 Residential Units on the Development until the Owner has entered into the Travel Plans Implementation Bond and has provided a copy of the Travel Plans Implementation Bond to the County Council.

10.3 In the event that the Owner fails to comply with and implement the measures and/or actions required by a Travel Plan Remedial Measures Notice and the County Council calls upon any



part of the Travel Plans Implementation Bond as is reasonably required to secure the implementation, or carrying out or delivery of the measures set out in the Travel Plan Remedial Measures Notice, to replenish the Travel Plans Implementation Bond up to the sum of £50,000 (fifty thousand pounds) or enter into a new bond in the sum of £50,000 (fifty thousand pounds) and to provide evidence to the County Council that the Travel Plans Implementation Bond has been replenished or that a new Travel Plans Implementation Bond has been entered into .

- 10.4 If the cost to the County Council in securing the implementation, or carrying out or delivery of the measures set out in the Travel Plan Remedial Measures Notice exceeds the value of the Travel Plans Implementation Bond to pay the difference between the Travel Plans Implementation Bond sum called upon and the total amount expended by the County Council within 20 (twenty) Working Days of receiving a written demand for the difference from the County Council and for the avoidance of doubt nothing in this paragraph 10.4 shall affect the requirement in paragraph 10.3 to replenish or enter into a new Travel Plan Implementation Bond in the sum of £50,000 (fifty thousand pounds) in the event the County Council calls on any part of the Travel Plans Implementation Bond.
- 10.5 To retain the Travel Plans Implementation Bond until the Travel Plans Implementation Bond Expiry Date whereupon it shall be discharged in full.

#### **11. Travel Plans**

To implement in full the Interim Travel Plan from Occupation of the first Residential Unit until the Full Travel Plan has been approved in writing by the County Council pursuant to paragraph 13.1 of this Schedule 4.

#### **12. Resident Travel Packs**

- 12.1 To submit a draft Resident Travel Pack to the County Council for written approval by the County Council no less than 3 (three) months prior to the Occupation of the first (1st) Residential Unit.
- 12.2 Not to Occupy or permit or allow Occupation of any Residential Unit until the draft Resident Travel Pack has been submitted to, and approved in writing by (or otherwise deemed to be approved pursuant to paragraph 3 of Schedule 16), the County Council.
- 12.3 To provide a Resident Travel Pack as approved in writing by the Council pursuant to paragraph 12.1 of this Schedule to each Residential Unit within 1 (one) month of the first Occupation of the relevant Residential Unit.

#### **13. Full Travel Plan**

- 13.1 To submit the Full Travel Plan to the County Council for written approval by the County Council prior to the first Occupation of the 100<sup>th</sup> (one hundredth) Residential Unit.
- 13.2 Not to Occupy or permit or allow Occupation of more than 99 (ninety nine) Residential Units until the Full Travel Plan has been submitted to, and approved in writing by (or otherwise deemed to be approved pursuant to paragraph 4 of Schedule 16), the County Council.
- 13.3 To implement the Full Travel Plan as approved by the County Council from the first Occupation of the 100<sup>th</sup> (one hundredth) for the remaining lifetime of the Development.

**14. Travel Plan Monitoring Report and Travel Plan Coordinator**

- 14.1 To submit to the County Council on an annual basis on the anniversary of the first Occupation of the 100<sup>th</sup> (one hundredth) Residential Unit the Travel Plan Monitoring Report and shall continue to do so until one (1) year has passed following Occupation of the final Residential Unit.
- 14.2 To appoint the Travel Plan Coordinator, such person to be approved in writing by the County Council, not less than 3 (three) months prior to the first Occupation of the first (1st) Residential Unit.

**15. Travel Plan Notice**

- 15.1 To comply with and implement the measures and/or actions specified in a Travel Plan Notice served by the County Council on the Owner within 20 (twenty) Working Days' of the date of service of the Travel Plan Notice;
- 15.2 If, after 20 (twenty) Working Days from the date of service of a Travel Plan Notice, the Owner has failed in the reasonable opinion of the County Council to comply with the requirements of the Travel Plan Notice, the County Council may serve a Travel Plan Remedial Measures Notice without further recourse to the Owner.

**16. Travel Plan Remedial Measures Notice**

- 16.1 To comply with and implement the measures and/or actions in the Travel Plan Remedial Measures Notice served by the County Council on the Owner within the timescales identified within the Travel Plan Remedial Measures Notice.
- 16.2 If the Owner has failed in the reasonable opinion of the County Council to comply with the measures and/or actions specified in a Travel Plan Remedial Measures Notice within the timescales specified therein the County Council may itself take the steps required by the Travel Plan Remedial Measures Notice and may call upon the Travel Plans Implementation Bond without further recourse to the Owner.

**17. TRO Contribution**

- 17.1 To pay the TRO Contribution to the County Council prior to the first Occupation of the first (1<sup>st</sup>) Residential Unit
- 17.2 Not to Occupy or permit or allow the Occupation of the first (1<sup>st</sup> Residential Unit unless and until the TRO Contribution has been paid in full to the County Council.

**18. Off-Site Traffic Mitigation Management Contribution**

- 18.1 To pay the Off Site Traffic Mitigation Management Contribution to the County Council prior to the first Occupation of the 500<sup>th</sup> (five hundredth) Residential Unit
- 18.2 Not to Occupy or permit or allow the Occupation of 499 (four hundred and ninety nine) Residential Units unless and until the Off Site Traffic Mitigation Contribution has been paid in full to the County Council.

**19. Rail Infrastructure Contribution**

- 19.1 To pay the Rail Infrastructure Contribution to the County Council prior to the first Occupation of the 300<sup>th</sup> (three hundredth) Residential Unit;

19.2 Not to Occupy or pennit or allow the Occupation of more than 299 (two hundred and ninety nine Residential Units unless and until the Rail Infrastructure Contribution has been paid in foll to the County Council.

## SCHEDULE 5: OPEN SPACE

The Owner covenants and agrees with the Borough Council:

1. that the Open Space may be temporarily closed to the public or individual members of the public (as appropriate) (unless in an emergency) if and to the extent that occasional temporary closure (not exceeding one day's length at any time in any calendar year) is necessary to assert rights of proprietorship to prevent public or private rights from coming into being by means of prescription or other process of law PROVIDED ALWAYS THAT this temporary closure wording in paragraph 1 of this Schedule 5 shall not apply if any of the following applies in which case the closure may be permitted to be for such period of time that is reasonable in the circumstances:
  - 1.1 works of maintenance, repair, cleaning, renewal or resurfacing need to be carried out;
  - 1.2 there is a risk to public health and safety;
  - 1.3 closure is necessary because of the lawful requirements of the police or any other competent authority; or
  - 1.4 the Borough Council and the Owner agree that temporary closure is appropriate for some other proper reason,

PROVIDED ALWAYS THAT such temporary closure of the Open Space (or the relevant part as applicable) shall be for the minimum period reasonably necessary and the Open Space shall be re-opened as soon as reasonably practicable thereafter

2. to maintain the Open Space in accordance with the approved Open Space Maintenance and Management Scheme in Perpetuity or until such time as the freehold of the Open Space:
  - 2.1 is transferred to the Management Company (in accordance with the Open Space Transfer) who shall thereafter become responsible and liable for the management and maintenance of the Open Space in accordance with the approved Open Space Maintenance and Management Scheme in Perpetuity; and
  - 2.2 an appropriate sum of money has been paid to the Management Company as necessary and reasonable in the circumstances to fund the management and maintenance of the Open Space in accordance with the Open Space Maintenance and Management Scheme during the period up until the point in time that funds received from future owners of the Residential Units are sufficient to fully fund such management and maintenance such sum having been previously approved by the Borough Council.
3. not to dispose of the Open Space within any Phase other than to a Management Company in accordance with the terms of this Schedule and Schedule 8.

## **SCHEDULE 6: HRA MITIGATION**

The Owner covenants with the Borough Council as follows:

### **1. HRA Mitigation: Country Park Commuted Sum**

1.1 The Owner covenants:

1.1.1 to pay the Country Park Commuted Sum in ten (10) equal annual instalments, the first instalment payable prior to first Occupation of the Development and not to Occupy the Development until the first instalment has been paid.

1.1.2 to pay the subsequent equal instalments of the Country Park Commuted Sum on the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th anniversaries of the date of payment of the first instalment AND not to Occupy more than 90% (ninety percent) of the Residential Units until the Country Park Commuted Sum has been paid in full.

### **2. BRA Mitigation: Country Park Phase Works**

Subject to the provisions of paragraph 4 of this Schedule:

2.1 Not to Occupy any Phase of the Development until the Phase 1 Country Park Phase Works have been Practically Completed and certified as so by the Borough Council.

2.2 Not to Occupy more than 50 (fifty) Residential Units (in aggregate with the Northern Land Development) until the Phase 2 Country Park Phase Works have been Practically Completed and certified as so by the Borough Council.

2.3 Not to Occupy more than 200 (two hundred) Residential Units (in aggregate with the Northern Land Development) until the Phase 3 Country Park Phase Works have been Practically Completed and certified as so by the Borough Council.

2.4 Not to Occupy more than 400 (four hundred) Residential Unit (in aggregate with the Northern Land Development) until the Phase 4 Country Park Phase Works have been Practically Completed and certified as so by the Borough Council.

2.5 Not to Occupy more than 600 (six hundred) Residential Units (in aggregate with the Northern Land Development) until the Phase 5 Country Park Phase Works have been Practically Completed and certified as so by the Borough Council.

2.6 Not to Occupy more than 800 (eight hundred) Residential Units (in aggregate with the Northern Land Development) until the Phase 6 Country Park Phase Works have been Practically Completed and certified as so by the Borough Council.

2.7 Not to Occupy more than 1200 (twelve hundred) Residential Units (in aggregate with the Northern Land Development) until the Phase 7 Country Park Phase Works have been Practically Completed and certified as so by the Borough Council.

### **3. Habitats Assessment Regulations Monitoring Contribution**

Not to Occupy the Development until it has paid the Habitats Regulations Assessment Monitoring Contribution to the Borough Council.

**4. HRA Mitigation: Landscaping Measures**

4.1 Subject to paragraphs 4.2, 4.3, 4.4 and 4.5 of this Schedule, if the Owner and the Borough Council agree (both acting reasonably) that the Country Park Phase Works (or any part of them) are not being delivered in accordance with the Country Park Indicative Programme the Owner:

4.1.1 may submit the Temporary SANG and the Temporary SANG Management and Maintenance Strategy for the Borough Council's written approval; and

4.1.2 shall implement the Temporary SANG as approved; and

4.1.3 shall not Occupy the Development otherwise than in accordance with paragraph 2 of this Schedule unless and until the Temporary SANG is Practically Complete.

4.2 If a Temporary SANG has been implemented in accordance with paragraph 4.1 of this Schedule the Owner shall not Occupy any more than 456 (four hundred and fifty six) Residential Units otherwise than in accordance with the provisions of paragraph 2 of this Schedule.

4.3 Immediately prior to or upon Completion of the Temporary SANG (using Reasonable Endeavours to provide the Borough Council with as much prior notice as practical that such notification is expected):

4.3.1 to serve written notice on the Borough Council inviting it to inspect the Temporary SANG and issue a Temporary SANG Certificate;

4.3.2 if the Borough Council inspects the Temporary SANG and identifies necessary remedial works (being for the purposes of this paragraph where any part of the Temporary SANG has not been laid out or completed in accordance with the Borough Council's approval), to complete such remedial works to the reasonable satisfaction of the Borough Council within 3 (three) months or such longer period as may be agreed by the Borough Council in writing (not to be unreasonably withheld or delayed) as may be relevant to the circumstances of the remedial works to be addressed; and

4.3.3 upon completion of any remedial works, to serve notice on the Borough Council inviting it to inspect the remedial works identified by them pursuant to paragraph 4.3.2 and issue a Temporary SANG Certificate

PROVIDED THAT if the Borough Council fails to inspect the Temporary SANG within 20 (twenty) Working Days of receipt of the invitation or fails to issue the Temporary SANG Certificate within 10 (ten) Working Days of the inspection where no remedial works have been identified then the obligations within this paragraph 4.3 shall be deemed to have been met.

4.4 The Owner shall maintain the Temporary SANG in accordance with the Temporary SANG Management and Maintenance Strategy approved pursuant to paragraph 4.1.1 of this Schedule until such time as the Country Park (or such alternative HR.A compliant measures that have been submitted to and approved in writing by the Borough Council) is/are implemented as approved.

4.5 The Parties to this Deed hereby acknowledge and agree that the costs of implementing the Temporary SANG, the Temporary SANG Management and Maintenance Strategy and

removal of the Temporary SANG shall not be included in any Viability Assessment submitted in accordance with Part 2 of Schedule 2 to this Deed

## **SCHEDULE 7 : DRAINAGE**

The Owner covenants and agrees with the Borough Council:

1. to maintain and manage the SuDS in accordance with the SuDS Maintenance and Management Scheme in Perpetuity or until such time as the freehold of the SuDS Land is transferred to a Management Company (in accordance with the SuDS Transfer) or statutory drainage authority who shall thereafter become responsible and liable for the management and maintenance of the SuDS in accordance with the SuDS Maintenance and Management Scheme in Perpetuity.
2. Save as otherwise agreed in writing with the Borough Council not to dispose of the SuDS other than to a Management Company or a statutory drainage authority in accordance with the terms of this Schedule and Schedule 8.
3. Save as otherwise agreed in writing with the Borough Council:
  - 3.1 not to locate any Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SuDS Land other than those public surface water sewers directly associated with and connected to the SuDS features; and
  - 3.2 not to locate the SuDS Land within an area of the Site that at the time Planning Permission is granted already has Utilities or Foul/Surface Water Drainage and Sewerage located within such area unless these are to be relocated, provided that the Borough Council shall not be permitted to refuse to agree locating Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SuDS Land or locating SuDS Land within an area that already has Utilities or Foul/Surface Water Drainage and Sewerage where the Owner can evidence that this would not adversely affect the functionality of the SuDS features provided further that if the Borough Council fails to respond to the Owner within 40 (forty) Working Days of the Owner seeking agreement to the locating of Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SuDS Land or locating SuDS Land within an area that already has Utilities or Foul/Surface Water Drainage and Sewerage such locating of Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SuDS Land or locating SuDS Land within an area that already has Utilities or foul/surface water drainage and sewerage shall be deemed to be agreed by the Borough Council



## SCHEDULES : MANAGEMENT COMPANIES

The Owner covenant with the Borough Council and the County Council (as applicable) as follows:

1. To set up the Management Company(ies) for the purposes of maintaining the common parts of the Development which will include management and maintenance of estate roads, (until they are adopted or dedicated by agreement) and if applicable, include management and maintenance of SUDS and Open Space all in accordance with the Maintenance and Management Schemes.
2. Prior to Occupation of any Phase of the Development the Owner shall submit evidence of the setting up of a Management Company, including a copy of the memorandum and articles of association, and evidence of the measures that the Owner will employ to secure the necessary funding for the Management Company to undertake the management and maintenance of the common parts of the Development (as referred to in paragraph 1) to the Borough Council and the County Council and shall not Occupy any Residential Unit within a Phase until the same have been provided to the Borough Council and the Management Company is operational.
3. Not to dispose of any of the Residential Units within a Phase until details of the Management Company referred to in paragraph 2 has been submitted to and approved in writing by the Borough Council PROVIDED THAT if the Borough Council fails to approve the details of the Management Company within 30 (thirty) Working Days of receipt of the same then the Management Company shall be deemed to have been approved.
4. The Owner shall procure that sufficient and appropriate funding is available to the Management Company(ies) to carry out its/their purposes generally and those in relation to the Maintenance and Management Schemes in accordance with Schedules 5 and 7 of this Deed and any relevant obligations to maintain the railway bridge links in accordance with Schedule 4 Part 1, for so long as is necessary to enable the Management Company(ies) to reasonably carry out its maintenance and other functions after completion of each Phase of the Development until the point in time that funds received from future owners of the Residential Units are sufficient to fully fund such management and maintenance responsibilities placed on the Management Company as a result of this Deed.
5. In the event that:
  - 5.1 the Open Space and/or SUDS is not managed and maintained in accordance with the approved Maintenance and Management Schemes to the Borough Council's reasonable satisfaction; and/or
  - 5.2 the Management Company (ies) either ceases to exist or goes into administration; and/or
  - 5.3 the Vehicular Railway Bridge Highway Link is not adopted or dedicated by agreement and not managed and maintained to public highway standard in accordance the specification shown on Drawing VD19107-SK10 1 Rev B or alternative standard as may be agreed between the Owner the Borough Council and the County Council;

the Borough Council, or the County Council (as appropriate) may upon providing no less than 20 (twenty) Working Days' written notice enter the Site and carry out work reasonably required to remedy the default and recover the proper and reasonably incurred costs and expenses incurred from the Owner.

## **SCHEDULE 9: HEALTH CARE**

The Owner covenants with the Borough Council as follows:

- I. Not to Occupy more than 50 (fifty) Residential Units until it has paid £79,613.32 (seventy nine thousand six hundred and thirteen pounds and thirty two pence) (Index Linked) of the Health Care Facilities Contribution to the Borough Council.
2. Not to Occupy more than 300 (three hundred) Residential Units until it has paid a further £79,613.32 (seventy nine thousand six hundred and thirteen pounds and thirty two pence) (Index Linked) of the Health Care Facilities Contribution to the Borough Council.
3. Not to Occupy more than 500 (five hundred) Residential Units until it has paid a further £79,613.32 (seventy nine thousand six hundred and thirteen pounds and thirty two pence) (Index Linked) of the Health Care Facilities Contribution to the Borough Council.
4. Not to Occupy more than 700 (seven hundred) Residential Units until it has paid the remaining £79,613.32 (seventy nine thousand six hundred and thirteen pounds and thirty two pence) (Index Linked) of the Health Care Facilities Contribution to the Borough Council.

## **SCHEDULE 10: DISTRICT CENTRE AND COMMUNITY SPACE**

### **Part 1: Community Space**

The Owner covenants with the Borough Council as follows:

#### **I. Community Space**

- 1.1 Prior to Occupation of more than 200 (two hundred) Residential Units within the Development to submit to the Borough Council for its written approval details of the location of the Community Space and not to Occupy more than 199 (one hundred and ninety nine) Residential Units within the Development until the Borough Council has approved the submitted details.
- 1.2 Prior to transfer of the Community Space to safeguard the Community Space and not allow it to be used (other than for temporary construction and storage purposes) as anything other than the location of the Community Space.
2. Prior to the Occupation of the 300<sup>th</sup> (three hundredth) Residential Unit to deliver a duly executed Community Space Transfer for the Approved Community Space on the terms set out at paragraph 3 of this Part I of Schedule IO to the Borough Council in exchange for consideration not exceeding in total the sum of one pound sterling (£1) PROVIDED THAT if the details submitted pursuant to paragraph 1.1 of this Part 1 have not been approved within 30 (thirty) Working Days of submission the date for transfer shall instead be delayed to a date to be agreed between the parties to enable at least nine (9) months between approval or deemed approval of the details and the date for transfer of the Approved Community Space;
3. The Community Space Transfer shall include the following terms:
  - (a) the Community Space shall be Fully Serviced and unencumbered;
  - (b) the Community Space shall be free from contamination which would prevent the use of the Community Space as land for the construction and use by the community of a community centre;
  - (c) the Community Space shall be transferred following completion of all necessary archaeological surveys
  - (d) not include any terms which would directly or indirectly affect the construction, servicing or occupation of the part of the Site that is to be retained by the Owner
  - (e) include any reasonable reservation of rights of access and services over the Community Space for the purpose of laying, managing, maintaining, replacing, renewing , cleaning and repairing services including but not limited to sustainable urban drainage measures, water, gas, sewerage, drainage or electricity (as applicable);
  - (f) include for the benefit of the Community Space the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the Community Space over any adjoining land for its intended purposes as a community centre;
  - (g) be at a consideration of £1;

- (h) include a covenant that the Owner shall bear the reasonable legal and professional costs of the Borough Council and any SDLT liability resulting from the transfer;
- 4. Not to Occupy or permit or allow Occupation of more than 299 (two hundred and ninety nine) Residential Units unless and until the Community Space Site Transfer has been duly executed and delivered to the Borough Council;

## **Part 2: Contributions**

The Owner covenants with the Borough Council:

### **1. Police Services Contribution**

Not to Occupy more than 49 (forty nine) Residential Unit within the Development until it has paid the Police Services Contribution to the Borough Council.

### **2. Community Development Contribution**

- 2.1 Not to Occupy more than 50 (fifty) Residential Units until it has paid £21,030 (twenty one thousand and thirty pounds) Index Linked of the Community Development Contribution to the Borough Council.
- 2.2 Not to Occupy more than 300 (three hundred) Residential Units until it has paid a further £21,030 (twenty one thousand and thirty pounds) Index Linked of the Community Development Contribution to the Borough Council.
- 2.3 Not to Occupy more than 500 (five hundred) Residential Units until it has paid a further £21,030 (twenty one thousand and thirty pounds) Index Linked of the Community Development Contribution to the Borough Council.
- 2.4 Not to Occupy more than 700 (seven hundred) Residential Units until it has paid the remaining £21,030 (twenty one thousand and thirty pounds) Index Linked of the Community Development Contribution to the Borough Council.

### **3. Air Quality Monitoring Contribution**

Not to Occupy the Development until it has paid the Air Quality Monitoring Contribution.

### **4. Valley Road/Westerfield Road Roundabout Improvements Contribution**

- 4.1 Subject to paragraph 4.2 below the Owner shall pay the Valley Road/Westerfield Road Roundabout Improvements Contribution by the first Occupation of the 400th Residential Unit and shall not first Occupy more than 399 Residential Units until the contribution has been paid.
- 4.2 If the Owner can demonstrate to the reasonable satisfaction of the Borough Council (and subject to first submitting Financial Information) that the Valley Road/Westerfield Road Roundabout Improvements have been delivered in lieu either:
  - 4.2.1 at the unrecoverable total cost, expense and liability of the Owner; or
  - 4.2.2 at shared cost, expense and liability with another developer(s) of the Ipswich Garden Suburb, or with grant funding or undertaken by a third party

The obligation to pay the contribution in accordance with paragraph 4.1 above shall be adjusted in accordance with the following formula:

Valley Road/Westerfield Road Roundabout Improvements Contribution minus the actual costs incurred by the Owner in delivering and/or contributing to the Valley Road/Westerfield Road Roundabout Improvements, as evidenced by the submission of Financial Information

- 4.3 If the Owner carries out the Valley Road/Westerfield Road Roundabout Improvements and can demonstrate to the reasonable satisfaction of the Borough Council (and subject to first submitting Financial Information) that the costs of doing so exceeded the Valley Road/Westerfield Road Roundabout Improvements Contribution the provisions of paragraph 6 and 6.2 of Schedule 15 shall apply.
- 4.4 If the Valley Road/Westerfield Road Roundabout Improvements are undertaken at the unrecoverable total cost, expense and liability of the Northern Land Owner and those owners can demonstrate to the reasonable satisfaction of the Borough Council in consultation with the Owner (and subject to first submitting Financial Information) that the costs of doing so exceeded the Northern Land Valley Road/Westerfield Road Roundabout Improvements Contribution, (the "**Northern Owner's Satisfaction Date**"), the Owner shall pay to the Borough Council the sum representing the difference between the value of the actual costs incurred and the Valley Road/Westerfield Road Roundabout Improvements Contribution within 20 (twenty) Working Days following the Northern Owner's Satisfaction Date and the provisions of paragraph 6 and 6.2 of Schedule 15 shall apply.

### **Part 3:**

The Owner covenants with the County Council:

#### **1. Library Contribution**

- 1.1 Prior to the first Occupation of the 300<sup>th</sup> (three hundredth) Residential Unit to pay to the County Council the Library Contribution.
- 1.2 Not to Occupy more than 299 (two hundred and ninety nine) Residential Units until it has paid the Library Contribution to the County Council.

## **SCHEDULE 11: CONSTRUCTION TRAINING AND EMPLOYMENT PLAN**

The Owner covenants with the Borough Council as follows:

1. Prior to Commencement of the Development to submit the Construction Training and Employment Plan to the Borough Council for approval which shall seek to maximise the employment and training opportunities arising within the Development for the benefit of the residents of the Borough of Ipswich and the surrounding areas which may include:
  - 1.1 information on whether there will be any construction related vacancies associated with the Development and if any vacancies are anticipated then information on the estimated number and type of vacancies to allow for partners to ensure a pipeline of appropriately trained and skilled staff for the duration of the construction phase PROVIDED THAT it is recognised that the number and type of vacancies may vary during the course of each construction phase of the Development;
  - 1.2 contractual obligations on any/all contractors involved in the delivery of Development to abide by and monitor compliance with the plan;
  - 1.3 the use of agreed means of advertising employment vacancies locally to maximise the opportunities for local residents to secure employment during the construction of the Development;
  - 1.4 the provision for on-site construction training and work experience, which may include apprenticeships but the Owner shall not be required to provide an on-site training centre;
2. Not to Commence Development until the Construction Training and Employment Plan has been approved by the Borough Council pursuant to paragraph 1 of this Schedule and to implement that plan as approved PROVIDED THAT if the Borough Council fails to approve or rejects the submitted Construction Training and Employment Plan within 20 (twenty) Working Days of receipt of the same then the Construction Training and Employment Plan shall be deemed to have been approved.
3. For the avoidance of doubt, the Owner and the Borough Council may agree in writing to vary Construction Training and Employment Plan at any time after it has been approved pursuant to paragraphs 1 and 2 of this Schedule.

## SCHEDULE 12: DELIVERY BOARD OBLIGATIONS

The Owner and the Borough Council and the County Council covenant with each other as follows:

1. Within three months of the date this Deed the Owner and the Borough Council must establish the IGS Delivery Board in accordance with the IGS Delivery Board Terms of Reference.

2. The IGS Delivery Board will:

2.1.1 be comprised of representative(s) of:

2.1.1.1 the Borough Council;

2.1.1.2 the Owner (as landowner);

2.1.1.3 the County Council;

2.1.1.4 and other key stakeholders including but not limited to Homes England;

receive reports from the Owner on progress with the Development and engagement with other landowners and those with third party interests in IGS;

2.1.2 consider the potential phasing and timing of the delivery of the Development; and

2.1.3 identify any issues to the timely delivery of the Development and IGS as a whole and propose resolutions to overcome the issues.

The Parties shall in all good faith and using Reasonable Endeavours seek to uphold and comply with the IGS Delivery Board Terms of Reference and the spirit within which they are drafted but for the avoidance of doubt the IGS Delivery Board shall not have any direct decision making powers or determination over the phasing and timing of the Development nor shall the IGS Delivery Board have any direct decision making powers, or determination on the form or quality of development nor long term management and governance arrangements for IGS which shall be secured and controlled by the Planning Permission and the obligations within this Deed.

3. The Borough Council the County Council and the Owner shall (once the IGS Delivery Board is established pursuant to paragraph 1 of this Schedule):-

3.1.1 ensure that the group meets at least every three months, at such location and with such parties and at such times and frequency as shall be appropriate from time to time;

3.1.2 notify each other of the names of their respective representatives (and any changes);

3.1.3 ensure their named representatives attend meetings of the IGS Delivery Board (or that substitutes, named in advance and properly briefed, attend in their place);

3.1.4 furnish the IGS Delivery Board with such information in relation to the Development as that group may reasonably request;

3.1.5 each party shall meet its own costs of such attendance; and

3.1.6 co-operate to agree venues for meetings of the IGS Delivery Board such venues to be at no cost to the Owner.



**SCHEDULE 13: HIF OVERSPEND REPAYMENT OR  
WITHDRAWAL**

The Owner and the Borough Council covenant with each other as follows:

**Part 1: Pedestrian and Cycle Railway Bridge**

**1. Owner's HIF P&C Overspend Contribution**

- 1.1 Subject to paragraphs 1.2 and 1.3 of this Part I of Schedule 13 in the event that there is a P&C Shortfall to pay the Owner's HIP P&C Overspend Contribution to the Borough Council within 10 (ten) Working Days of the date of receipt of a written request from the Borough Council for payment of the Owner's HIP P&C Overspend Contribution PROVIDED THAT the liability for payment of the Owner's HIF P&C Overspend Contribution shall not fall due until Development is begun for the purposes of section 56 of the 1990 Act and the Parties agree that the carrying out of the works to construct the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge and/or the Vehicular Railway Bridge Highway Link shall not comprise the Development for the purposes of this Schedule.
- 1.2 If (a) the Owner's HIP P&C Overspend Contribution is notified to the Owner prior to first Occupation of the Development and (b) 699 (six hundred and ninety nine) or more dwellings have been constructed on the Northern Land Development, not to Occupy the Development unless and until the Owner has paid the Owner's HIP P&C Overspend Contribution to the Borough Council.
- 1.3 If either:
- 1.3.1 the Owner's HIP P&C Overspend Contribution is not known prior to first Occupation of the Development; or
- 1.3.2 less than 699 (six hundred and ninety nine) dwellings have been constructed on the Northern Land Development
- then after the date of service of a written notice on the Owner by the Borough Council of the Owner's HIP P&C Overspend Contribution which notice shall not be served until after the construction of the 699th (six hundred and ninety ninth) dwelling on the Northern Land Development not to Occupy any further Residential Units within the Development until the Owner has paid the Owner's HIP P&C Overspend Contribution to the Borough Council.
- 1.4 For the avoidance of doubt the Parties agree that in the event that notice is served requiring payment of the Owner's IDF Withdrawal Payment pursuant to paragraph 3 of this Part 2 of Schedule 13 the Borough Council cannot also serve notice requiring payment of the Owner's HIP P&C Overspend Contribution.

**2. Owner's HIF Withdrawal Payment**

- 2.1 Subject to paragraphs 2.2 and 2.3 of this Part 1 of Schedule 13 where HIP is withdrawn to pay the Owner's HIP Withdrawal Payment to the Borough Council within 20 (twenty) Working Days of the date of receipt of a written request from the Borough Council for payment of the Owner's HIP Withdrawal Payment PROVIDED THAT the liability for payment of the

Owner's HIF Withdrawal Payment shall not fall due until Development is begun for the purposes of section 56 of the 1990 Act and the Parties agree that the carrying out of the works to construct the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge and/or the Vehicular Railway Bridge Highway Link shall not comprise the Development for the purposes of this Schedule and at the same time agree that the restrictions on Occupation pending Practical Completion of the Pedestrian and Cycle Railway Bridge as set out in Schedule 4 to this Deed continue to apply.

2.2 If (a) the P&C Withdrawal Costs are known prior to first Occupation of the Development and (b) 699 (six hundred and ninety nine) or more dwellings have been constructed on the Northern Land Development, not to Occupy the Development unless and until the Owner has paid the Owner's HIF Withdrawal Payment to the Borough Council.

2.3 If either:

2.3.1 the P&C Withdrawal Costs are not known prior to first Occupation the Development; or

2.3.2 less than 699 (six hundred and ninety nine) dwellings have been constructed on the Northern Land Development

then after the date of service of a written notice on the Owner by the Borough Council of the Owner's HIF Withdrawal Payment which notice shall not be served until after the construction of the 699th (six hundred and ninety ninth) dwelling on the Northern Land Development not to Occupy any further Residential Units within the Development until the Owner has paid the Owner's HIF Withdrawal Payment to the Borough Council.

## **Part 2: Country Park**

The Owner and the Borough Council covenant with each other as follows:

### **1. Owner's Country Park Withdrawal Payment**

1.1 Subject to paragraph 1.2 of this Part 2 of Schedule 13 where HIF is withdrawn (in part or in full) then within 20 (twenty) Working Days of the date of receipt of written confirmation of the CP Withdrawal Costs for the relevant Country Park Phase Works from the Borough Council to pay the Owner's Country Park Withdrawal Payment for the relevant Country Park Phase Works to the Borough Council PROVIDED THAT the Owner shall not be required to make any payment until Development is begun for the purposes of section 56 of the 1990 Act and the Parties agree that the carrying out of the works to construct the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge and/or the Vehicular Railway Bridge Highway Link shall not comprise the Development for the purposes of this Schedule;

1.2 In respect of any one of the Country Park Phase Works and following receipt of any demand issued by the Borough Council in accordance with paragraph 1.1 of Part 2 of this Schedule, not to Occupy of any further Residential Units or dispose of any legal or equitable interest in further Residential Units (including any Affordable Housing Unit) or Commercial Unit until the Owner's Country Park Withdrawal Payment for the relevant Country Park Phase Works has been paid to the Borough Council;

- 1.3 In the event that the Northern Land Owner does not deliver the Country Park in accordance with the triggers identified in the Country Park Indicative Programme, the Owner may submit a written request to the Borough Council:
- 1.3.1 asking the Borough Council to exercise its step in rights contained at paragraph 21 of Part I of Schedule 6 of the Northern Land Obligation, to deliver the Country Park or such part of the Country Park Phase Works; and
- 1.3.2 offering to pay the Owner's Country Park Withdrawal Payment (or part thereof) to the Borough Council to fund the carrying out of the Country Park Phase Works (or any part of them)
- 1.4 If pursuant to a request made by the Owner in accordance with paragraph 1.3 the Borough Council agrees (acting reasonably) that the Northern Land Owner is not delivering/will not deliver the Country Park in accordance with the triggers identified in the Country Park Indicative Programme and subject to it being satisfied (acting reasonably) that it can use its step in rights in accordance with paragraph 21 of Part 1 of Schedule 6 of the Northern Land Obligation the Borough Council and the Owner shall use Reasonable Endeavours to agree a revised programme for the delivery of the Country Park or any part of it including identifying delivery of which elements of the Country Park would enable the Owner to Occupy up to 815 Residential Units on the Site in accordance with an appropriate assessment carried out under the Habitats Regulations.
- 1.5 In the event that the Borough Council and the Owner agree in writing that the Owner's Country Park Withdrawal Payment can fund the delivery of the Country Park Phase Works (or any part of them) to enable the Owner to Occupy up to 815 Residential Units on the Site without breaching the Habitats Regulations and/or the requirements of condition 36 of the Planning Permission, (the "**Agreed Country Park Phase Works**"), then subject to receipt by the Borough Council of the Owner's Country Park Withdrawal Payment the Borough Council shall undertake the Agreed Country Park Phase Works in accordance with the programme agreed in pursuant to paragraph 1.4 PROVIDED THAT unless and until the Agreed Country Park Phase Works are completed and made available for use by the public, any relevant Occupation restrictions as set out in Schedule 6 to this Deed shall continue to apply.

### **Part 3 - Owners' HIF Repayment Contribution**

#### **1 Provision Post Practical Completion of the Development**

1.1 If Development is Practically Complete prior to the Borough Council levying a demand pursuant to paragraph 2.1 of Part 3 of this Schedule and the Owner fails to comply with the obligations in paragraph 2.1 of Part 3 of this Schedule then the Owner shall be liable to pay the Owner's HIF Repayment Contribution pursuant to paragraph 2.1 of Part 3 of this Schedule together with the greater of:

- 1.1.1 20% (twenty per cent) of the Owner's Country Park HIF Repayment Contribution cap (as set out in the definition of Owner's Country Park HIF Repayment Contribution); or

1.1.2 £100,000 (one hundred thousand pounds).

## **2. Owner's HIF Repayment Contribution**

- 2.1 Until the End Date where Homes England demands that the HIF is be repaid in accordance with the terms of the GDA to pay the Owner's HIF Repayment Contribution to the Borough Council within 2 Working Days of the date of receipt of a written request from the Borough Council for payment of the Owner's HIF Repayment Contribution PROVIDED THAT there shall be no obligation to pay any Owner's HIF Repayment Contribution until the Development has begun for the purposes of section 56 of the 1990 Act and the Parties agree that the carrying out of the works to complete the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge and/or the Vehicular Railway Bridge Highway Link shall not comprise the Development for the purposes of this Schedule.
- 2.2 In the event the Development has not been Practically Completed when the Borough Council levies the demand for payment of the Owner's HIF Repayment Contribution and the Owner fails to make a payment of the Owner's HIF Repayment Contribution within 2 (two) Working Days pursuant to the demand then not to Occupy or dispose of any legal or equitable interest in any further Residential Units (including any Affordable Housing Unit) or Commercial Unit until the Owner has paid the Owner's HIF Repayment Contribution to the Borough Council.
- 2.3 In the event that the Borough Council receives notice from Homes England under the terms of the GDA that Homes England intends to Clawback (as defined in Schedule 14) the HIF or any part of it such that the Owner's HIF Repayment Contribution shall become due the Borough Council covenants with the Owner that it shall:
- 2.3.1 notify the Owner in writing as soon as reasonably possible of the threat of Clawback by Homes England of the HIF or any part of it and provide the Owner with an opportunity to rectify any Event of Default (as defined in Schedule 14) if such Event of Default is caused by the Owner PROVIDED THAT the Borough Council shall not be under any obligation to provide the Owner with an opportunity to rectify any Event of Default if to do so would result in the Borough Council being in breach of the GDA and/or the Crest Back to Back Agreement; and
  - 2.3.2 comply with its obligations in the GDA insofar as reasonably possible to do so to prevent such Clawback by Homes England taking place and PROVIDED THAT the parties hereby acknowledge and agree that any breach of the Crest Back to Back Agreement by the Northern Land Owner shall not be held to be a failure of the Borough Council to comply with its obligations in the GDA; and
  - 2.3.3 provide the Owner with as much notice as is reasonably possible if Homes England decides that it shall exercise its rights to Clawback the HIF or any part of it.

## **SCHEDULE 14: GENERAL HOUSING INFRASTRUCTURE FUNDING OBLIGATIONS**

### **Part 1: General Obligations**

The Borough Council and the Owner acknowledge and where appropriate covenant with each other as follows:

- 1.1 Homes England and the Borough Council entered into the GDA on 2nd October 2019 pursuant to which Homes England agreed to make the Funding available to the Borough Council on the terms of the GDA.
- 1.2 For the avoidance, where any defined terms used in this Schedule are defined elsewhere in this Deed, the defined terms in this Schedule shall apply to this Schedule only.
- 1.3 The Borough Council and the Northern Land Owner ("for the purposes of this Schedule only referred to as "Crest") entered into the Crest Back-to-Back Agreement on or about the date hereof pursuant to which the Borough Council agreed to make the Funding it receives under the GDA available to Crest in consideration for the carrying out of the HIF Funded Infrastructure Works and, amongst other matters, achievement of the Outputs (as such term is defined in the Crest Back-to-Back Agreement) and Milestones (as such term is defined in the Crest Back-to-Back Agreement).
- 1.4 The Owner acknowledges that the Borough Council has entered into the GDA to procure the Funding to deliver the HIF Funded Infrastructure Works that are necessary to facilitate the development of the Wider Project and that there are a number of obligations and liabilities under their GDA and all documentation referred to in the GDA (including but not limited to the Assurance Framework) that relate to the Wider Project.
- 1.5 The Owner agrees pursuant to the terms of this Schedule to take responsibility for its share of such obligations and liabilities as more particularly set out in this Schedule and in Schedule 13 to this Deed in consideration for and by way of acknowledgment that the HIF Funded Infrastructure Works facilitate the development of the Wider Project which includes the CBRE Project and agrees that such obligations and liabilities shall apply from the date of this Deed.
- 1.6 The Owner acknowledges that the Borough Council has entered into the Crest Back-to-Back on or about the date of this Deed and that the Borough Council may enter into the Other Developer Agreements to enable Other Developers to take responsibility for their share of the obligations and liabilities in relation to the Wider Project under the GDA including proportionate liabilities in relation to the HIF Funded Infrastructure Works and all documentation referred to in the GDA (including (but not limited to) the Assurance Framework).
- 1.7 The Owner acknowledgesthat:-
  - 1.7.1 the Borough Council has provided it with copies of the GDA, all other documentation referred to in the GDA (including but not limited to the Assurance Framework) and the Owner shall be deemed to have studied the same and to be fully aware of the obligations, risks, liabilities and potential liabilities assumed by the Borough Council under the GDA and all documentation referred to in the GDA (including but not limited to the Assurance Framework) and the Owner acknowledges that such obligations, risks and liabilities are (and such obligations, risks and liabilities shall be deemed to be) within the contemplation of the Owner; and

- 1.7.2 the Borough Council may enter into Other Developer Agreements with Other Developers and that the Borough Council will provide a copy of any Other Developer Agreement (or the relevant extract only of the Other Development Agreement) as soon as reasonable practicable after the date of execution of such Other Developer Agreement and the Borough Council receiving confirmation from the Other Developer that such agreement (or relevant part of) may be shared and, upon receipt of such notice in accordance with Clause 3.4 (Communications) of this Schedule, the Owner shall be deemed to have notice of those terms and agrees that the references to Other Developer and Other Developer Agreement in this Schedule will capture the new developer and agreement accordingly.
- 17 B The Parties acknowledge that the Owner may sub-contract some or all of its obligations under this Schedule to an affiliate or other third party but shall remain primarily responsible for all obligations under this Schedule including but not limited to any Disposal of the whole or any part of the CBRE Site and/or the obligations contained within Schedule 13 (HIF Overspend, Repayment or Withdrawal) notwithstanding such sub-contracting and shall procure that all such obligations are fully complied with
- 18 Subject to compliance with the proviso in this paragraph and with paragraph 1.9 below first happening then once the Owner has disposed of its interest *in* the CBRE Site or any part of it the Owner shall be released from all of its obligations in this Schedule 14 insofar as they relate to that part of the CBRE Site that has been disposed of save in respect of (a) any antecedent breaches and/or liabilities and (b) in the event of disposal of part of its interest in the CBRE Site the Owner shall remain jointly and severally liable (along with the purchaser of the part of the CBRE Site that is disposed of for the provisions of this Schedule 14 that relate to payment of the Agreed Proportions in particular clauses 4.1.1 and 5.1 of Part 1 and paragraphs 7.4.1 and 8 of Part 3 PROVIDED THAT the Owner procures that the purchaser of the CBRE Site (or part thereof) enters into an equivalent form of covenant to this Schedule 14 in favour of the Borough Council (without any interruption) with the intent and effect that the purchaser will observe and perform the terms of this Schedule 14 as though it had been named as the Owner in it and the Owner shall procure that this Schedule 14 will be enforceable by the Borough Council against such purchaser .
- 19 Within 20 (Twenty) Business Days of the date of this Deed the Owner shall apply to Her Majesty's Land Registry to have the following restriction entered onto its title in relation to the CBRE Site and provide evidence of the same to the Borough Council:
- "No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that a Deed of covenant as required by paragraph 1.8 of Schedule 14 of the Section 106 Agreement dated [DATE] made between (1) Ipswich Borough Council (2) Suffolk County Council (3) CBRE SPUK III (No.45) Limited (4) The Kesgrave Covenant Limited (5) Wo & Po Jolly Holdings Limited and (6) Maureen Cynthia Moyes has been entered into or that it does not apply to the disposition"
- 1.10 The Owner shall (and shall procure that any of its employees, sub-contractors, agents or advisors shall) perform its obligations under this Schedule so that no act or omission by the Owner (or any of its employees, sub-contractors, agents or advisers) in relation thereto shall:-

- 1.10.1 constitute or cause any breach by the Borough Council of any of its obligations under the GDA;
  - 1.10.2 cause any other liability on the part of the Borough Council under the GDA; or
  - 1.10.3 cause the loss of any other rights, entitlements or other benefits of the Borough Council under the GDA.
- 1.11 The Parties acknowledge and agree that where, under this Schedule, any consent or authorisation is required from the Borough Council, it shall be legitimate for the Borough Council to take into account any consent or authorisation which the Borough Council would, in turn, need to obtain under the GDA.
- 1.12 The Owner shall perform any acts, confirm any decisions and/or provide any information in a timely manner as is required under this Schedule to enable the Borough Council to comply with its obligations under the GDA.
- 1.13 The Borough Council shall perform any acts, confirm any decisions and/or provide any information in a timely manner as is required under the GDA and the Borough Council shall comply with its obligations under the GDA PROVIDED THAT where in relation to the GDA such performance, confirmation, provision and compliance by the Borough Council requires input from the Owner in accordance with the performance of the Owner's obligations under this Schedule then the Borough Council's performance, confirmation, provision and compliance shall be subject to the performance of the Owner's obligations under this Schedule.

**General**

- 2.1 All definitions and principles of interpretation set out in the standard terms and conditions of the Funding specified in Part 3 of this Schedule shall apply to all Parts and Appendices of this Schedule together with the CBRE Project specific definitions set out in Part 2 and the Assurance Framework and all Parts and Appendices of this Schedule and the Assurance Framework are incorporated into and form part of this Deed.
- 2.2 The Owner acknowledges and agrees that:

<b>Agreed Proportions</b>	those proportions in relation to the Pedestrian Bridge Works and the Country Park Works as set out in Schedule 13 and associated definitions of this Deed in relation to the CBRE Site being 42.6% of the P&C HIF Allocation up to a cap of £558,087 and 23.3% of the CP IDF Allocation up to a cap of £984,425 plus any proportional costs and or interest levied by Homes England as detailed in the relevant associated conditions;
<b>Availability Period</b>	the date of this Deed up to (and including) 31 March 2022;
<b>Bridge Works</b>	means the Pedestrian Bridge Works and the Vehicle Bridge Works

<b>CBRE Project</b>	means a development which forms part of the Wider Project and comprises of the delivery of 815 residential units (including Affordable Housing), associated infrastructure or any other construction on the CBRE Site the Output of which is to be unlocked by the delivery of the works including the HIF Funded Infrastructure Works;
<b>CBRE Project Completion Date</b>	31 December 2038
<b>CBRE Site</b>	means all of the land and buildings situated within the Wider Project Site as shown for identification purposes only edged red on the Plan at Appendix 1 to this Schedule
<b>Commitment Sub-Caps</b>	<p>means the maximum proportion of the Total Commitment that can be drawn down by Crest under the Crest Back to Back Agreement in relation to each element of the HIF Funded Infrastructure Works as follows:</p> <ol style="list-style-type: none"> <li>1. up to four million, two hundred and twenty five thousand pounds (£4,225,000) in relation to the Country Park Works (the "<b>Country Park Sub Cap</b>"); and</li> <li>2. up to five million, six hundred and forty three thousand, three hundred and fifty one pounds (£5,643,351) in relation to the Bridge Works (the "<b>Bridge Sub Cap</b>"),</li> </ol> <p>provided always that where the total Development Costs relating to the Country Park Works is less than the Country Park Sub Cap or where the total Development Costs relating to the Bridge Works are less than the Bridge Sub Cap, the relevant sub cap(s) will be reduced by a corresponding amount;</p>
<b>HIF Funded Infrastructure Works</b>	<p>means the infrastructure works being funded pursuant to the GDA including but not limited to the construction of:</p> <ol style="list-style-type: none"> <li>(a) a country park (the "<b>Country Park Works</b>") which shall include and house a visitor centre;</li> <li>(b) one pedestrians and cyclist railway bridge (the "<b>Pedestrian</b></li> </ol>



	<p><b>Bridge Works"); and</b></p> <p>(c) one vehicle railway bridge (the "<b>Vehicle Bridge Works</b>")</p> <p>in support of the delivery of new homes in the Ipswich Garden Suburb;</p>
<b>HIF Repayment Sums</b>	where any Clawback and/or repayment of Funding (in whole or in part) and/or any other related costs, losses and/or interest are claimed by Homes England under the GDA during the term of the GDA or resulting from termination for any reason;
<b>Outputs and Milestones</b>	means the Outputs and Milestones set out in Part 4 of this Schedule;
<b>Restriction on Title In favour of the Borough Council as set out in Clause 1.8 of Part 1 of this Schedule</b>	Yes
<b>Start Date of CBRE Project</b>	1 June 2022
<b>Total Commitment</b>	means up to nine million, eight hundred and sixty eight thousand, three hundred and fifty one pounds (£9,868,351) provided always that where the total Development Costs relating to the HIF Funded Infrastructure Works is less than such amount, the Total Commitment will be reduced by a corresponding amount;
<b>Wider Project</b>	means a development comprising of the delivery of not less than 3,500 residential units (including Affordable Housing) (acknowledging that the Borough Council's obligation is to use reasonable endeavours to achieve this number under the GDA), associated infrastructure or any other construction on the Wider Project Site the Output of which is to be unlocked by the delivery of the works including the HIF Funded Infrastructure Works and the development shall be implemented by a number of projects including the CBRE Project;
<b>Wider Project Site</b>	means all of the land and buildings forming the Ipswich Garden Suburb to which the Wider Project relates and shown for identification purposes only edged blue on the

	plan at Appendix 1 to this Schedule (and which land is referred to as the "Wider Project Site" in the GDA);
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3 CONDITIONS PRECEDENT TO FUNDING

**3.1 Conditions precedent to each Claim for Funding**

The Owner acknowledges and accepts that:

3.1.1 Homes England's obligations to make available any Funding under the GDA is subject to Clause 3 (Condition Precedent To Funding) of the GDA, Schedule 2 (Standard Terms and Conditions of Funding) of the GDA and the conditions precedent more particularly specified in Schedule 4 (Pre-conditions) of the GDA each being in a form and substance satisfactory to Homes England at the time:

- (a) when the Borough Council delivers a Claim Form to Homes England; and
- (b) when such Funding is to be made available to the Borough Council;

3.1.2 the Owner shall (and shall procure that any of its employees, sub-contractors, agent or adviser shall) perform its obligations under this Deed in order that the Borough Council can comply with its obligations under the GDA and drawdown the Funding in accordance with the terms and conditions of the GDA.

**3.2 Reporting**

3.2.1 The Owner acknowledges and accepts Clause 3.4 (Reporting) and Appendix 2 (Cashflow) of the GDA and confirms that Appendix 2 (Cashflow) of the GDA incorporates information in relation to the Initial Cashflow provided by CBRE in relation to the CBRE Project.

3.2.2 The Owner will provide the Borough Council with the Monitoring and Progress Report in accordance with Paragraph 9 to the Standard Terms and Conditions at Part 3 of this Schedule and the Assurance Framework.

3.2.3 It is acknowledged and agreed that where development has not begun on the CBRE Site, CBRE shall submit the Monitoring and Progress Reports in accordance with Paragraph 9 to the Standard Terms and Conditions at Part 3 of this Schedule but that a nil response to certain parts of the Monitoring and Progress Report(s) may be provided save that the Monitoring and Progress Report(s) will always contain the information (or any updates to such information) in relation to the Cashflow (which may be the Initial Cashflow provided by CBRE in relation to the CBRE Site in Appendix 2 (Cashflow) of the GDA where no updates and/or additions to the Initial Cashflow are relevant).

**3.3 Payment**

The Owner will be responsible for its Agreed Provision of any payment of the HIF Repayment Sum to the Borough Council in accordance with Paragraphs 7.4 and 8 to the Standard Terms and Conditions of Part 3 of this Schedule subject always to the caps set out in Schedule 13 to this Deed.

### 3.4 Communications

3.4.1 Notwithstanding the provisions of Clause 18 (Service of Notices) in the main body of this Deed, the contact(s) for all enquiries in relation to this Schedule to this Deed at:

- (a) the Borough Council Authority are Martyn Fulcher (Head of Development), with copies to Lisa Evans (Principal Planning Officer) and Rosalynn Claxton (Principal Planning Officer) or such other individuals as the Borough Council may specify by notice under Clause 3.4.3; and
- (b) the Owner are C/O Birketts Solicitors 22 Station Road Cambri dge CB1 2JD Ref no 309045.1.

Subject to Clause 3.4.2, all correspondence between the Parties must be in writing and either be delivered at or sent by first class post to the address on page 1 of this Deed in the case of the Borough Council or the address at (b) above in respect of the Owner.

3.4.2 In relation to service of notice under Clause 4.1.2 only, service of notice shall be by way of email to the following email addresses:

- (a) Martyn.Fulcher@ipswich.gov.uk with copies to Lisa.Evans@ipswich.govuk and Rosalynn.Claxton@ipswich.gov.uk for the Borough Council or such other individuals as the Borough Council may specify by notice under Clause 3.4.3; and
- (b) Tom-Newcombe@Birketts.co.uk with a copy to Rosalind-Nuttall@Birketts.co.uk for the Owner or such other individuals as the Borough Council may specify by notice under Clause 3.4.3,

and such notice shall be accepted as having been received on the day of delivery save where the notice is not delivered on a Business Day and in which case the notice shall be accepted as having been received on the first Business Day after delivery.

3.4.3 Any notice or other communications between us shall be accepted as having been received:

- (a) if sent by first class post, three Business Days after posting exclusive of the day of posting; or
- (b) if delivered by hand, on the day of delivery save where the notice is not delivered on a Business Day and in which case the notice shall be accepted as having been received on the first Business Day after delivery.

Either of the Borough Council or the Owner may change the details of service by notice in accordance with the above.

### 3.5 Amendments to this Schedule

The Borough Council may amend or vary this Schedule to this Deed where either:

- (a) mandatory changes are required by the UK or EU laws or regulations; and/ or

- (b) an equivalent amendment has been made to the ODA on the instruction of Homes England; and/or
- (c) by mutual written consent between the Owner and the Borough Council.

### **3.6 Pre-contract conditions**

The Borough Council acknowledges that the pre-conditions in Clause 3.8 of the ODA have been met by the Borough Council to the satisfaction of Homes England prior to the execution of the ODA.

## **4 TERMINATION OF OR CLAWBACK UNDER THE GDA**

- 4.1.1 Where the HIF Repayment Sums are due and payable pursuant to the terms of the ODA and/or the Crest Back to Back Agreement for any reason then, subject to Clause 5.1 below, the Owner shall be responsible for the Agreed Proportions of such HIF Repayment Sum in accordance with the provisions of Part 3 of Schedule 13 to this Deed and shall indemnify the Borough Council for such Agreed Proportion and shall pay such sums to the Borough Council within 2 (two) Business Days of a written demand by the Borough Council.
- 4.1.2 If Homes England serves any notice to terminate the ODA on the Borough Council, the Borough Council shall serve a copy of such notice on the Owner via email within 2 Business Days of receipt of the same for the Owner's information only (save where paragraph 7.3 of Part 3 of this Schedule applies and the Borough Council requests details from Owner as to how the Owner proposes to remedy such breach pursuant to paragraph 7.3 of Part 3 of this Schedule and in such case the Owner shall provide such details to the Borough Council via email within 2 Business Days of receipt of such notice from the Borough Council) and for the avoidance of doubt such correspondence shall not constitute service of a termination notice under this Schedule to this Deed.
- 4.1.3 The Owner shall remain responsible for any antecedent breaches and/or liabilities incurred by the Owner prior to the date of such termination subject always to the caps set out in Schedule 13 of this Deed.

## **5 LIABILITY**

- 5.1 The Parties acknowledge and agree that:
  - 5.1.1 that the Owner's liability under Clause 1.8 and Clause 4.1.1 of this Schedule shall only be reduced from the Agreed Proportions to the extent that any such breach, liability, cost or loss arises as a direct result of a default by or negligence on the part of the Borough Council or any of their employees, sub-contractors, agents or advisers; and
  - 5.1.2 without prejudice to Clause 5.1.1, the Borough Council shall have no liability to the Owner under this Schedule including (but not limited to) any liability to provide any amount of funding to replace any or all of the Funding where such Funding has been varied, suspended or withheld or subject to any Clawback or recovery or repayment pursuant to paragraphs 7 (Clawback on Default) and/or 8 (Overpayments) in Part 3 below and the terms of the ODA for any reason whatsoever or for any other direct, indirect or consequential loss whether arising therefrom during the term of this Deed or as a result of termination.

**RT2**

**PROJECT SPECIFIC DEFINITIONS**

The following terms shall have the following meanings when used in this Schedule (unless the context requires otherwise).

<b>Actual CBRE Project Completion Date</b>	the date by which the CBRE Project is actually completed and a practical completion certificate has been issued (which may include any snagging items) .
<b>Affordable Housing</b>	means any low cost subsidised housing available to people whose incomes generally deny them the opportunity to rent or purchase dwellings on the open market or similar community or social housing or shall bear such other meaning as may be defined in this Deed or subsequent agreement made pursuant to a Planning Agreement relating to the CBRE Site.
<b>Assurance Framework</b>	means the assurance framework for the Housing Infrastructure Fund - Marginal Viability Funding provided by Homes England to the Borough Council on 7 November 2018, as set out in Appendix 4 (Assurance Framework) to this Schedule.
<b>Borough Council Senior Officer</b>	means the employee of the Borough Council holding the title of 'Section 151 Officer' or any such other person with equivalent seniority notified to Homes England by the Borough Council
<b>Cashflow Recovery Amount</b>	means £9,868,351, which figure shall be decreased to the same amount as the Total Commitment, in the event that the Total Commitment is decreased, in accordance with the mechanism set out in the definition of that term in the GDA.
<b>CBRE Project Costs</b>	means the development costs that relate to the CBRE Project.
<b>Development Costs</b>	has the meaning set out under the GDA.
<b>Disposal</b>	means a transfer, disposal or grant of any legal or equitable interest in or over the CBRE Site or part thereof (other than (in relation to any land assets) by way of grant of a legal charge or the grant of a licence not creating exclusive possession terminable on 3 months' notice or less) including by way of lease
<b>End Date</b>	the date specified in Part 4 of this Schedule by which the Borough Council may exercise any Clawback provision.
<b>Existing Crest Draft Planning Agreement</b>	means the draft planning agreement (now in agreed form) to be made pursuant to section 106 of the Town and Country Planning Act 1990 between (1) the Borough Council (2) East Suffolk Council (3) Suffolk County Council (4) John Fonnereau and (5) Crest and references to the Existing Crest Draft Planning Agreement shall include the agreement once finalised and executed.

<b>Market Value</b>	<p>means in relation to the CBRE Site or any part or parts thereof (including in each case the works (or the relevant part thereof) thereon) the Market Value as defined in the Practice Statement Number PS 3.2 of the RICS Appraisal and Valuation Standards 6th Edition as varied from time to time BUT (in addition to the assumptions mentioned in that definition) on the following further assumption s in relation to the CBRE Site (or relevant part or parts of it:</p> <ul style="list-style-type: none"> <li>a) the Disposal is subject to and with the benefit of any subsisting leases which are Permitted Disposals or agreements for the same but otherwise sold with vacant possession free from all charges and other encumbrances;</li> <li>b) all necessary consents for any works have been obtained and the same can be lawfully used;</li> <li>c) any damage caused by any insurable risk has been made good;</li> <li>d) it has the benefit of all easements and rights necessary for the beneficial use and occupation of it; and</li> <li>e) which complies with: <ul style="list-style-type: none"> <li>1. the Borough Council's obligations to obtain Market Value under the Local Government Act 1972; and</li> <li>11. State Aid Law (as defined under Paragraph 8 of Part 3 of this Schedule.)</li> </ul> </li> </ul>
<b>Other Developer</b>	<p>means Crest and any other landowner or developer bringing forward the development of the Wider Project (excluding the CBRE Project) on the Wider Project Site (excluding the CBRE Site) and references to "Other Developers" shall be construed accordingly;</p>
<b>Other Developer Agreement</b>	<p>means the Crest Back-to-Back Agreement or any relevant extract of an agreement or a standalone agreement (whether in the form of a Planning Agreement or otherwise) entered into by the Borough Council and any Other Developer (which contains terms in materially the same form as this Schedule) to enable Other Developers to take responsibility for their share of the Borough Council's obligations and liabilities under the GDA in relation to the Wider Project (excluding the CBRE Project) on the Wider Project Site (excluding the CBRE Site) and their Agreed Proportion of any HIF Repayment Sum (and including for this purpose any agreement guaranteeing or providing security for any such obligations and liabilities , if any) and references to "Other Developer Agreements " shall be construed accordingly;</p>
<b>Planning Agreement</b>	<p>means in relation to the CBRE Project (which includes a development for residential purposes) any agreement or other instrument binding the CBRE Site (or any part of it) by way of an enforceable obligation under Section 106 of the Town &amp; Country Planning Act 1990 Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or the Open Space Act 1906 or under any other enactment or local statute having similar force and the</p>

	expression ' <b>Planning Agreement</b> ' shall also include any Works Agreement and shall include any variations or modifications to any Planning Agreement or Works Agreement from time to time agreed with any relevant authority
<b>Receipts</b>	<p>means the aggregate of all proceeds or other receipts of CBRE in relation to the CBRE Project including but not limited to:-</p> <ul style="list-style-type: none"> <li>(a) all rents, licence fees and other income or sums received or receivable following any Disposal of any part of the CBRE Site; and</li> <li>(b) all proceeds received or receivable or the amount or value of all consideration received or receivable from any Disposal of any part of the CBRE Site;</li> <li>(c) the proceeds of any insurance policy;</li> <li>(d) interest (if any) accruing on any items listed at (a) to (c) above,</li> </ul> <p>but excluding Funding.</p>
<b>Standard Terms and Conditions of Funding</b>	means the standard terms and conditions of funding contained at Part 3 of this Schedule.
<b>Works Agreements</b>	<p>means any agreement relating to the provision, installation, maintenance and (where appropriate) adoption of infrastructure works made pursuant to:</p> <ul style="list-style-type: none"> <li>(1) Section 38 or Section 278 of the Highways Act 1980 or similar agreement for the construction maintenance and adoption of any footways footpaths verges visibility splays junctions roundabouts bridges bus lay-bys cycle ways accommodation works traffic management schemes street lighting and street furniture and ancillary landscaping and the connection of the same to the public highway or any other works to the public highway</li> <li>(2) Section 98 or Section 104 of the Water Industry Act 1991 or similar agreement relating to the provision and adoption of any sewers drains pipes manholes culverts channels watercourses soakaways outfalls and other conduits and apparatus systems necessary for drainage ("<b>Drainage System</b>") or for the diversion of existing Drainage Systems</li> <li>(3) any agreement with a relevant authority for the diversion or undergrounding of existing or the installation of any new service media required for the provision and supply of water gas electricity telephone telecotrunications cable television closed circuit television (if appropriate) and all other appropriate services</li> </ul>

	and/or any other similar agreement or deed of grant required for the carrying out provision maintenance cleansing and (where appropriate) adoption of works by a relevant authority and shall include any variations or modifications to any Works Agreement from time to time agreed with any relevant authority
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## PART3

### STANDARD TERMS AND CONDITIONS OF FUNDING

#### 1. DEFINITIONS

1.1 In these Standard Terms and Conditions the following words and expressions have the following meanings:

**Availability Period** means as defined in Clause 2.2 to this Schedule 14;

**Business Day** means any day other than a Saturday, Sunday or statutory bank holiday in England.

**Cashflow** means the cashflow for the CBRE Project setting out information including but not limited to:

(a) total costs;

(b) envisaged total Receipts;

(c) total source(s) of funding for the CBRE Project;

which shall be based on the format of the Initial Cashflow unless an alternative format has been agreed at anytime **with** the Borough Council and approved by Homes England and provided to the Borough Council as part of the Monitoring and Progress Report;

**CDM Regulations** means the Construction (Design and Management) Regulations 2015;

**Claim** means an application for Funding pursuant to and in accordance with the GDA;

**Claim Form** means the document in the form of the template annexed as Appendix 4 of the GDA to be completed and provided by the Borough Council to the nominated Homes England contact at agreed intervals to claim Funding;

**Clawback** means the Borough Council's right to recover the whole or any part of the Funding under Paragraph 7 or 8 of this Part 3 of this Schedule 14;

**Commitment Sub-Caps** means as defined in Clause 2.2 to the Agreement ;

**CBRE Project** means as defined in Clause 2.2 of Part 1 to this Schedule;

**CBRE Project Completion Date** means the date by which the work on the CBRE Project is to be completed as defined in Clause 2.2 of Part 1 of this Schedule

**CBRE Project Details** means information provided by or on behalf of CBRE in relation to the CBRE Project, which shall include , without limitation:

(a) the descriptive and other details in respect of the CBRE Project as set out in the definitions of CBRE Project, the Milestones and the Outputs;

(b) all details of the works required to complete the CBRE Project;

(c) the Cashflow;

(d) the timing for Disposals.

each as may have been varied from time to time with the Borough Council's prior agreement in accordance with the terms of this Schedule;

**Data Protection Legislation and DPL** means (i) unless and until the General Data Protection Regulation (EU) 2016/679) (the GDPR) is no longer directly applicable in the UK, the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018 (the DPA) and (iii) all applicable Law relating to the processing of personal data and privacy;

**EU Procurement Regulations** means all applicable United Kingdom and European Union procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union

directives 89/665/EEC, 2004/17/EC and 2014/24/EU, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228, 2006/6 and 2015/102 (Public Contracts Regulations 2015) insofar as the same are applicable;

**Financial Year** means the period from 1<sup>st</sup> April in one year to the 31<sup>st</sup> March in the subsequent calendar year;

**Funding** has the meaning set out under the GDA;

**Health and Safety Legislation** means any applicable health and safety legislation, statutory instruments or regulations (including but not limited to the Health and Safety at Work etc. Act 1974) and any guidance and/or codes of practice relating to them;

**HIF Funded Infrastructure Works** means as defined in Clause 2.2 to Part 1 of this Schedule;

**Initial Cashflow** means the cashflow for the CBRE Project as detailed at Appendix 2 of the GDA setting out information including but not limited to:

- (a) total costs;
- (b) envisaged total Receipts;
- (c) total source(s) of funding for the CBRE Project.

**Insolvency** means where the Owner is unable to pay its debts as they fall due or are insolvent (within the meaning of s.123(1) of the Insolvency Act 1986 in the case of a company, or s.268 of the Insolvency Act 1986 in the case of an individual) or the Owner enters into any arrangement with creditors, or a liquidator, trustee in bankruptcy, receiver, administrator, administrative receiver or similar is appointed, or possession or enforcement or any other similar process is taken against the Owner or any of its assets and Insolvent shall be interpreted accordingly;

**Monitoring and Progress Report** means a report

(including the Cashflow) prepared by the Owner in relation to the CBRE Project and submitted to the Borough Council, the means of submission and the location of the form being as notified by the Borough Council to the Owner from time to time in writing;

**Milestones** means the key events and stages as agreed between the Owner and the Borough Council in relation to the CBRE Project as detailed in Part 4 of this Schedule and **Milestone Dates** shall be construed accordingly;

**Outputs** means the specific targets and objectives agreed between the Owner and the Borough Council as detailed in Part 4 of this Schedule;

**Permitted Disposal** means a disposal:

- (a) of freehold or leasehold disposal part or parts of the CBRE Site in an arm's length transaction; and/or
- (b) of part or parts of the CBRE Site pursuant to a lease, or licence and in an arm's length transaction; and/or
- (c) of part or parts of the CBRE Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements; and/or
- (d) made pursuant to a planning obligation pursuant to section 106 of the Town & Country Planning Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 or section 33 and/or the Local Government Act 1972 section 111 and the Highways Act 1980 section (s) 38 and/or 278; and/or
- (e) any other disposal which Homes England, pursuant to the terms of the GDA, agrees (in writing) from time to time will become a Permitted Disposal,

provided that in the case of a Disposal the contracted sale price is at Market Value and

the Disposal is in line with the CBRE Project Details .

**Quarter Date** means each of 31 March, 30 June, 30 September and 31 December, and **Quarter** means the period between two Quarter Dates;

**Regulatory Body** means any UK or EU Government department or agency or any other regulatory body having jurisdiction whether regional, national or local and including, but not limited to, the Ministry for Housing, Communities and Local Government, UK central Government , the European Commission or any successor such department, agency or regulatory body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in this Schedule or any other affairs of Homes England or the Borough Council;

**CBRE Site** means as defined in Clause 2.2 to Part 1 of this Schedule;

**Start Date** means the date by which the work on the CBRE Project is to be started as defined in Clause 2.2 to the Part 1 of this Schedule;

**Wider Project** means as defined in Clause 2.2 of Part 1 of this Schedule;

## 1.2 Interpretation

1.2.1 A reference to:

- (a) the masculine includes the feminine and vice versa ;
- (b) the singular includes the plural and vice versa; and
- (c) a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees .

1.2.2 Any reference in this Schedule (including, for the avoidance of doubt, these Standard Terms and Conditions) to any Clause, condition, sub-condition, Paragraph, Schedule, Appendix or section heading is, except where it is

expressly stated to the contrary, a reference to such clause, condition, sub-condition, paragraph, schedule, appendix or section heading of this Schedule.

1.2.3 Any reference to any enactment, order, regulation or similar instrument (including any Legislation) shall (except where expressly stated otherwise) be construed as a reference to the same as amended, replaced, consolidated or re-enacted.

1.2.4 A time of day shall be a reference to London time.

1.2.5 A party means either the Borough Council or the Owner (including its successors in title).

1.2.6 The words includes or including are to be construed without limitation.

1.2.7 In any case where the consent or approval of the Borough Council (or any officer of the Borough Council) is required or a notice is to be given by or to the Borough Council, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Schedule or such other person as may be specified to the other parties from time to time.

1.2.8 If there is any ambiguity or conflict between the implied terms and the express terms of this Schedule then the express terms shall prevail.

1.2.9 No review comment or approval by the Borough Council under the provisions of this Schedule shall operate to exclude or limit the Owner's obligations or liabilities under this Schedule save where the Borough Council have confirmed the said review comment or approval in writing.

1.2.10 The Owner shall be responsible as against the Borough Council and/or Homes England for the acts or omissions of any contractor as if they

were the acts or omissions of the Owner.

1.2.11 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Borough Council shall, unless otherwise expressly stated in this Schedule or agreed in writing by the Borough Council, relieve the Owner of any of its obligations under this Schedule or of any duty which it may have to ensure its correctness, accuracy or suitability nor does it confer impose or imply any liability or responsibility on or on behalf of the Borough Council in respect of or in connection with the matter to or in relation to which such approval, consent, examination, or acknowledgement was given or review made.

1.2.12 "disposal" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly.

1.2.13 any reference to "works" in this Schedule (including these Standard Terms and Conditions) shall mean the works to be carried out on each CBRE Site to enable the delivery of a CBRE Project in accordance with the Schedule, the CBRE Project Details, the CBRE Project Documents, the consents, the authorisations and this Schedule.

## **2. PROVISION OF FUNDING**

2.1 The Owner acknowledges and accepts that subject to the terms and conditions of the GDA, that Homes England agrees to make available to the Borough Council during the Availability Period the Funding in an aggregate principal amount equal to the Total Commitment provided always that any Funding in relation to:

2.1.1 the Country Park Works shall not exceed the Country Park Sub Cap; and

2.1.2 the Bridge Works shall not exceed the Bridge Sub Cap.

2.2 In relation to the Pedestrian Bridge Works, where there is any P&C Overspend (as defined in Clause 1.1 of this Deed) the Owner will be responsible for the Owner's HIF P&C Overspend Contribution (as defined in Clause 1.1 of this Deed) in accordance with the terms of Part 1 of Schedule 13 of this Deed and shall pay such sums to the Borough Council within 10 (ten) Business Days following receipt of such demand from the Borough Council.

## **3. PRE-CONDITIONS OF FUNDING**

3.1 The Owner acknowledges and accepts that:

3.1.1 Homes England's obligations under the GDA are subject to having received all documents and other evidence detailed in Part 5 of this Schedule each in a form and substance to the satisfaction of the Borough Council; and

3.1.2 The Owner shall (and shall procure that any of its employees, sub-contractors, agents or advisors shall) perform its obligations under this Schedule in order that the Borough Council can comply with its obligations under the GDA.

## **4. WARRANTIES AND REPRESENTATIONS**

At all times, the Owner warrants and confirms to the Borough Council that at all times:

4.1 it:

4.1.1 is a legally constituted body and has the full capacity and authority and all necessary consents to enter into and perform the obligations under this Schedule; and

- 4.1.2 acknowledges that it constitutes valid, legal and binding obligations of and on the Owner which are enforceable against it;
- 4.2 all information, documents and accounts provided by the Owner or on its behalf, from time to time are and will be true, valid and correct;
- 4.3 it is not in breach of any law, regulation, agreement or obligation which affects or may affect its ability to commit to this Schedule;
- 4.4 NOT USED;**
- 4.5 is not aware of any fact or circumstance that may affect the successful completion of the CBRE Project or otherwise constitutes a breach of this Schedule;
- 4.6 is not aware of any fact or circumstance whereby the CBRE Project is not proceeding in accordance with the Cashflow;
- 4.7 NOTUSED**
- 4.8 NOTUSED**
- 4.9 it has full legal control and good title to the CBRE Site and all other assets necessary to enable delivery of the CBRE Project and has all such further rights as are necessary to comply with its obligations in this Schedule;
- 4.10 It will comply with the Assurance Framework;
- 4.11 NOTUSED**
- 4.12 NOTUSED**
- 4.13 NOTUSED**
- 4.14 it will comply with EU Procurement Regulations (to the extent that the same apply);
- 4.15 it will procure that all contractors comply with EU Procurement Regulations (to the extent that the same apply); and
- 4.16 The Owner or the Owner's building contractor has appointed a Principal Designer and Principal Contractor (each being as defined by the CDM Regulations) and has provided the Borough Council with a copy of the notification to the Health and Safety Executive of the particulars specified in schedule 1 of the CDM Regulations;
- 4.17 it will provide the Borough Council with all information that it requires (acting reasonably) in order to verify the information provided by the Owner to the Borough Council in relation to this Schedule to include but is not limited to any information required in relation to any Claim and/or the Cashflow under the GDA, the information provided by the Owner to the Borough Council pursuant to paragraph 9 (Application Notification and Reporting Obligations) and/or the information provided pursuant to Part 6 of this Schedule (Viability Assessment) and where the Borough Council (acting reasonably) requires external advisors to review the same, the Owner shall be responsible for the reasonable costs of such advisors.

## **5. PAYMENT OF FUNDING**

- 5.1 The Owner acknowledges and accepts the Borough Council's obligations in paragraph 5 (Payments of Funding) of Schedule 2 of the GDA and that the Owner shall provide any information requested by the Borough Council (acting reasonably) within 5 Business Days of receiving a request about the same provided that such information relates to the CBRE Project only to enable the Borough Council to submit Claim Forms, Cashflow and any other document or information required under the GDA in accordance with timeframes and conditions contained within the GDA.

- 5.2 The Owner shall ensure that any information provided accords with the

Cashflow and that the Owner confirms in its response that each Milestone is to be met by the relevant Milestone Date or is accompanied by evidence satisfactory to the Borough Council (at its absolute discretion) to justify any deviation.

## **6. THE OWNER'S DELIVERY OBLIGATIONS**

6.1 The Owner will procure that:

6.1.1 the CBRE Project commences by the Start Date and is carried out in accordance with the Milestone Dates and the Cashflow; and

6.1.2 the Milestones are achieved.

## **7. CLAWBACKONDEFAULT**

7.1 In the event that the Borough Council in its sole and absolute discretion determines that an event of default has occurred in respect of the events listed at Paragraph 7.2 (**Event of Default**) the Borough Council has the right to call an Event of Default by issue of a notice to the Owner in respect of the same.

7.1A It is noted that the Owner does not have full control over the delivery of the Outputs, and it is therefore agreed that obligations in this Schedule to deliver the Outputs shall be deemed to have been complied with if the Owner has used its reasonable endeavours to deliver the Outputs, or procure that they are delivered.

7.2 An Event of Default occurs where:

7.2.1 any representation or warranty made by the Owner pursuant to Paragraph 4 is materially incorrect at any point;

7.2.2 The Owner fails to achieve any Output or Milestone;

7.2.3 The Owner becomes Insolvent or any steps are taken by any person toward such Insolvency;

7.2.4 The Owner commits a material breach of any of the terms and conditions of this Schedule (and fails to remedy such breach within 10 days of the Borough Council asking the Owner to do so);

7.2.5 The Owner does not comply with Paragraph 9 (Applicant Notification and Reporting Obligations);

7.2.6 The Owner does not comply with any conditions on it relating to the operation of a viability assessment under Schedule 2 of this Deed and any other Planning Agreement relating to the CBRE Project and/or the CBRE Site; and/or

## **7.2.7 NOT USED**

7.2.8 The Owner does not comply with paragraph 17.1 (Transfer).

## **7.3 The Borough Council's rights**

Where an Event of Default has occurred the Borough Council at its absolute discretion may by notice to the Owner:

7.3.1 pursuant to Paragraph 7.2.2 only, consider and agree a revised Milestone Date with the Owner in which case any relevant condition of this Schedule shall apply mutatis mutandis to the revised Milestone Date; and

7.3.2 pursuant to Paragraph 7.2.3 only, require the Owner to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to the Borough Council within 3 Business Days of such request for approval. The Borough Council (at its absolute discretion);

(a) may approve the terms of the plan to remedy in writing in which case any relevant condition of this Schedule shall apply mutatis mutandis to the terms of the plan to remedy albeit the Event of Default shall continue until such time as it is remedied to the Borough Council's satisfaction; or

- (b) decline to approve the terms of the plan to remedy with the Event of Default continuing.

#### 7.4 Acceleration

- 7.4.1 On and at any time after the occurrence of an Event of Default which is continuing the Borough Council may by notice to the Owner to require payment of an amount equivalent to all or part of the Agreed Proportions (or to the value thereof) subject always to a cap of £1,542,512 (one million five hundred and forty two thousand five hundred and twelve pounds) plus Indexation and the provisions of Part 3 of Schedule 13 of this Deed, together with costs and expenses of the Borough Council and/or Homes England under the GDA and/or this Schedule), any such recoveries to be paid to the Borough Council within two (2) Business Days of the Borough Council's demand.

### 8 OVERPAYMENTS

The Borough Council may require payment from the Owner of an amount equivalent to any or all of the Agreed Proportions subject to a cap of £1,542,512 (one million five hundred and forty two thousand five hundred and twelve pounds) and in accordance with the provisions of Part 3 of Schedule 13 to the extent that:

- 8.1 Funding is varied or withheld by Homes England or repayment or recovery is required by Homes England under the GDA or under or by virtue of any European Union state aid laws (including without limitation under Article 107 of the Treaty on the Functioning of the European Union and/or any applicable judgment, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding) ("State Aid Law"); and/or
- 8.2 The Borough Council and/or Homes England is otherwise required to repay or recover such Funding in whole or in part by or to the European Commission.

Any Funding required to be paid in accordance with this Paragraph 8 will bear interest at such rate as required under or by virtue of State Aid Law from the date of Homes England's notice to the Borough Council (pursuant to and in accordance with Clause 8 of the GDA) (and the Borough Council shall notify the Owner promptly of the receipt of any such notice) or, where no notice is received under the GDA, from the date of the Borough Council's notice to CBRE under this Schedule requiring payment to the date of payment (both before and after judgement) or such other period as may be required under or by virtue of State Aid Law.

### 9 APPLICANT NOTIFICATION AND REPORTING OBLIGATIONS

#### 9.1 Reporting

The Owner will:

- 9.1.1 from the date of this Deed until the end of the Availability Period, and no later than seven (7) Business Days following each Quarter Date, provide the Monitoring and Progress Report to the Borough Council save that the first Monitoring and Progress Report shall be for the period commencing on 2nd October 2019 and ending on the next Quarter Date;
- 9.1.2 once the Availability Period has expired, except where the Borough Council has confirmed to the Owner in writing (within three calendar months and two weeks following the expiration of the Availability Period) that the provisions of Paragraph 9.1.1 are to remain effective (at its discretion), provide the Monitoring and Progress Reports to the Borough Council twice a year, such reports to be provided no later than five (5) Business Days following the end of March and September of the relevant Financial Year until the Actual Project Completion Date (as such term is defined in the GDA) or such other date that the Borough Council notifies the Owner of in writing;

- 9.1.3 notwithstanding Paragraphs 9.1.1 and 9.1.2, provide the Borough Council with more frequent Monitoring and Progress Reports should it be requested to do so by the Borough Council (at its absolute discretion) where the Borough Council has itself been required to provide Homes England with more frequent Monitoring and Progress Reports under the GDA;
- 9.1.4 provide the Borough Council with such other information as the Borough Council may reasonably require in connection with the CBRE Project and CBRE's Outputs and Milestones in order to comply with the Borough Council's obligations under the GDA only; and
- 9.1.5 procure that the Owner's Representative and/or any other officers appointed by the Owner to deal with the CBRE Project will attend such meetings as the Borough Council may reasonably request to review progress in relation to the CBRE Project.

## **9.2 Inspection and Audit Facilities**

The Owner will:

### **9.2.1 NOT USED.**

- 9.2.2 provide the Borough Council and/or Homes England, in writing, with any such information about the CBRE Project and/or the Programme as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions;
- 9.2.3 allow the Borough Council and/or Homes England or persons authorised by it to inspect, audit and take copies of all reports, books, accounting records and vouchers which relate to the CBRE Project provided that the Borough Council and/or Homes England does not impede or obstruct the progress of the CBRE Project; and

- 9.2.4 at all times retain documentary evidence provided by the Owner to the Borough Council under this Schedule to support each Claim and will maintain full and accurate accounts for the CBRE Project in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force. For the purpose of this Paragraph 9.2.4 "**Accounting Standards**" means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Accounting Standards Board.

## **10 NOTUSED**

## **11 DISPOSALS**

- 11.1 The Owner will procure that the whole and any part or parts of the CBRE Site are disposed of by way of a Permitted Disposal only and will not make any other Disposal of the CBRE Site or any part thereof without the consent of the Borough Council (acting on the instructions of Homes England pursuant to paragraph 11 (Disposals) of Schedule 2 of the GDA) and where such consent is required the Borough Council shall promptly request instructions from Homes England if requested to do so by the Owner.

## **12 CONDUCT**

- 12.1 The Owner must comply with and assist and co-operate with the Borough Council in order that the Owner and the Borough Council can comply with (and require third parties who benefit from this Funding and any appointed contractors do the same) all applicable legal obligations and statutory requirements in relation to the CBRE Project, including, but not limited to:

- 12.1.1 EU and UK Planning and Environmental legislation



12.1 U State Aid Law, including but not limited to N7471A/99 and N747/8/99

Partnership Support for Regeneration  
(1) Support for Speculative  
Developments and (2) Suppmi for  
Bespoke Developments

12.1.3 Any relevant health and safety legislation

12.1.4 Modern slavery

12.1.5 Employment legislation

12.1.6 CDM Regulations

12.1.7 Equal opportunities (in relation to race, sex, disability, faith and sexuality)

12.1.8 Financial regulations and legislation

12.1.9 Copyright and Data Protection legislation

12.2 The Owner must not grant any lender security over the HIF Funded Infrastructure Works (including but not limited to any part of the CBRE land forming part of the HIF Funded Infrastructure Works) unless the Owner has first obtained the Borough Council's written consent (acting on the instructions of Homes England pursuant to the terms of the GDA). No consent under this Schedule or the GDA is required for the grant by the Owner of lender security over any other land or assets related to the CBRE Project (excluding the HIF Funded Infrastructure Works or any part of the CBRE Land forming part of the HIF Funded Infrastructure Works).

12.3 In carrying out the CBRE Project the Owner must not act directly or indirectly in any way that will bring the Borough Council and/or Homes England into disrepute.

12.4 The Owner must inform the Borough Council immediately if any of its directors, officers or partners are a) disqualified, or b) subject to investigation or challenge which may

have a detrimental effect upon the Borough Council and/or Homes

England and/or the CBRE Project.

12.5 The Owner must advise the Borough Council immediately of any threat of or any notice or any resolution in respect of any Insolvency.

12.6 The Owner **will** act in good faith to achieve the Milestones and Outputs and will provide evidence of this to the Borough Council as required by the Borough Council.

12.7 The Owner will provide the Borough Council with such evidence that it requires that the CBRE Project Costs have been incurred.

12.8 The Borough Council agrees, and the Owner accepts that the Owner:

12.8.1 is a "client" as defined by the CDM Regulations and warrants that it will make suitable arrangements for the managing the CBRE Project and maintaining and reviewing these arrangements throughout, so the CBRE Project is carried out in a way that manages health and safety risks in accordance with applicable Legislation including but not limited to the CDM Regulations;

12.8.2 will act as the only client in respect of the CBRE Project and CBRE hereby agrees to be the only client under the CDM Regulations for the CBRE Project;

12.8.3 shall comply fully with all the duties of the client under the CDM Regulations.

12.9 The Owner will procure that all contractors comply at all times with the Health and Safety Legislation and the CDM Regulations and the requirements of the Health and Safety Executive;

### 13. INSURANCE

13.1 The Owner must take out and maintain with a reputable insurance company

adequate insurance of the type and level of cover which it is reasonable to expect from a business such as that operated by the Owner.

13.2 The Owner must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to the Borough Council within seven (7) days of any such request being made by the Borough Council.

#### 14. CONFIDENTIALITY, FREEDOM OF INFORMATION, DATA PROTECTION, PUBLIC RELATIONS AND PUBLICITY

##### 14.1 Definitions

In this Paragraph 14 the following words and expressions have the following meanings :

**Confidential Information** means any and all information whether disclosed or otherwise made available by one Party to another (or otherwise obtained or received by a Party) whether before or after the date of this Deed including but not limited to:

- (a) know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);
- (b) the existence or terms of Schedule 13 and this Schedule 14 or other information relating to the CBRE Project, any Other Developer Agreements or the Wider Project; and
- (c) information relating to a Party's business and affairs, its customers, employees and suppliers;

in whatever form in each case (including but not limited to information given orally or in writing or in any document electronic file or machine readable form or other means of recording or representing information whatsoever) and including any information (in whatever form) derived from such information

**EIR** means the Environmental Information Regulations 2004, and any subordinate legislation made under the Environmental Information Regulations 2004 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

**EIR Exception** means any applicable exemption to EIR;

**Exempted Information** means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions;

**FOIA** means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

**FOIA Authority/Authorities** means a public authority as defined by FOIA and/or EIR;

**FOIA Exemption** means any applicable exemption to the FOIA;

**Information** means in relation to:

- (a) FOIA the meaning given under section 84 of the FOIA and which is held by the Borough Council and/or Homes England at the time of receipt of an RFI; and
- (b) EIR the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by the Borough Council and/or Homes England at the time of receipt of an RFI;

**Information Commissioner** has the meaning set out in section 6 of the DPA;

**Request for Information/RFI** shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the CBRE Project, any Agreement or any activities or business of the Borough Council and/or Homes England.

## 14.2 Confidentiality and freedom of information

### 14.2.1 Confidentiality

- (a) Each party recognises that under this Schedule it may receive Confidential Information belonging to the other.
- (b) Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Borough Council and/or Homes England and/or the Owner and/or any Other Developers arising or coming to its attention during the currency of this Deed to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Schedule. Subject always to Paragraph 14.2.2 and the Borough Council's obligations in relation to FOIA and/or EIR, where under the GDA the consent of the Borough Council is required for the disclosure of Confidential Information, then in so far as such Confidential Information relates to the Owner, the Borough Council will not consent to its disclosure by Homes England without the prior written consent of the Owner.
- (c) The obligations of confidence referred to in Paragraph 14.2.1 (a) above will not apply to any Confidential Information which:

is in, or which comes into, the public domain otherwise than by reason of a breach of the Schedule or of any other duty of confidentiality relating to that information; or

ii is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or

m is lawfully in the possession of the other party before the date of the Deed and in respect of which that party is not under an existing obligation of confidentiality; or

IV is independently developed without access to the Confidential Information of the other party.

- (d) Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:

to enable the disclosing party to perform its obligations under the Schedule; or

ii by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA and the EIB.. and the Owner acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Borough Council and/or Homes England may nevertheless be obliged to disclose such Confidential Information; or

m by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or

iv in order to give proper instructions to any professional adviser of that party who also

- has an obligation to keep any such Confidential Information confidential.
- (e) The Owner will ensure that all Confidential Information obtained from the Borough Council under or in connection with the Schedule and the Borough Council will ensure that all Confidential Information obtained from the Owner under or in connection with this Schedule:
- i is given only to such of its employees, professional advisors, Contractors or consultants engaged to advise it in connection with this Schedule as is strictly necessary for the performance of this Schedule and only to the extent necessary for the performance of this Schedule;
  - ii is treated as confidential and not disclosed (without the other's prior written approval) or used by any such staff or professional advisors, contractors or consultants otherwise than for the purposes of this Schedule;
  - iii where it is considered necessary in the opinion of the Borough Council the Owner will ensure that such staff, professional advisors, contractors or consultants sign a confidentiality undertaking before commencing work in connection with this Schedule.
- (f) Nothing in this paragraph 14.2.1 shall prevent the Borough Council and/or Homes England:
- i disclosing any Confidential Information for the purpose of:
    - A the examination and certification of the Borough Council's and/or Homes England's accounts; or
    - B any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Borough Council and/or Homes England has used its resources; or
  - ii disclosing any Confidential Information obtained from the Owner:
    - A to any other department, office or agency of the Crown; or
    - B to any person engaged in providing any services to the Borough Council and/or Homes England for any purpose relating to or ancillary to this Schedule or any person conducting an Office of Government Commerce gateway review; or
  - iii provided that in disclosing information under Paragraphs 14.2.1(f)(ii)(A) or 14.2.1(f)(ii)(B) above the Borough Council and/or Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- (g) Nothing in this Paragraph 14.2.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of this Schedule in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

#### 14.2.2 Freedom of information

- (a) The Owner acknowledges that the Borough Council and/or Homes England is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that the Borough Council and/or Homes England may be under an obligation to provide Information subject to a Request for Information.
- (b) The Borough Council shall be responsible for determining at its absolute discretion whether:
- i any Information is Exempted Information or remains Exempted Information; or
  - ii any Information is to be disclosed in response to a Request for Information.
- (c) Subject to Paragraph 14.2.2(d) below, the Owner acknowledges that the Borough Council and/or Homes England may be obliged under the FOIA or the EIR to disclose Information:
- i without consulting the Owner ; or
  - ii following consultation with the Owner and having taken (or not taken, as the case may be) its views into account.
- (d) Without in any way limiting Paragraphs 14.2.2(b) and 14.2.2(c) above, in the event that the Borough Council receives a Request for Information or Homes England informs the Borough Council of Request for Information, the Borough Council will, where appropriate, as soon as reasonably practicable notify the Owner.
- (e) The Owner will assist and cooperate with the Borough Council as requested by the Borough Council to enable the Borough Council and/or Homes England (as applicable) to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents, contractors and sub-contractors will), at their own cost:
- i provide all such assistance as may be required from time to time by the Borough Council and/or Homes England (as applicable) and supply such data or information as may be requested by the Borough Council; and
- (f) Nothing in this Schedule will prevent the Borough Council or Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and / or the EIR in relation to any Exempted Information.
- (g) **NOT USED.**
- (h) The obligations in this Paragraph 14.2.2 will survive the expiry or termination of the GDA for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Schedule or of any other duty of confidentiality relating to that information.

#### 14.2.3 **Publication of information before Parliament**

The Owner acknowledges that the National Audit Office has the right to publish details of this Schedule in its relevant reports to Parliament.

### 14.3 Data Protection

For the purposes of this Paragraph 14.3, "Personal Data" and "Process" shall have the meanings ascribed to them in the Data Protection Legislation as amended or re-enacted from time to time.

#### 14.3.1 Cooperation

The parties will co-operate with one another in order to enable each party to fulfil its statutory obligations under the DPL.

#### 14.3.2 Registrations, notifications and consents

The Owner warrants and represents that it has obtained all and any necessary registrations, notifications and consents required by the DPL to Process Personal Data for the purposes of performing its obligations under this Schedule. The Owner undertakes at all times during the term of this Schedule to comply with the DPL (and the data protection principles contained therein) in processing all Personal Data in connection with this Schedule and shall not perform its obligations under this Schedule in such a way as to cause the Borough Council and/or Homes England to breach any of its applicable obligations under the DPL.

#### 14.4 NOT USED

### 15. INDEMNITY

The Owner will be liable for and will indemnify the Borough Council in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or damage to property (whether belonging to the Borough Council and/or Homes England or otherwise) or any claim by Homes England pursuant to the GDA or by any third party arising directly or indirectly out of or caused or contributed to by the CBRE Project and/or the performance or non-performance or delay in performance by the Owner of its obligations under this Schedule except that (i) the extent of the Owner's liability under this Clause shall be reduced to the extent that the same is due to an

act or neglect on the part of Homes England or the Borough Council or any of their employees, sub-contractors, agents or advisers; and (ii) there shall be no double recovery under Clause 4.1.1.

### 16. ACCESS TO INFORMATION

#### 16.1 NOT USED

16.2 The Owner is required to record for the Borough Council any such information as may be required to monitor and evaluate the performance of this Schedule. The Owner is required to retain this information for access by the Borough Council or any Regulatory Body for a minimum period of 10 years from the End Date.

16.3 The Owner is required to promptly provide to the Borough Council, at its reasonable request, access to all and any information which is requested by Homes England from the Borough Council under the GDA about the CBRE Project including the location(s) at which the CBRE Project will be/has delivered and/or the Outputs from the Start Date up to and including the End Date.

### 17. TRANSFER

17.1 Save as otherwise specifically agreed in writing by the Borough Council or in accordance with Clause 1.7B of Part 1 of this Schedule 14 in relation to sub-contracting only and Clauses 1.8 and 1.9 of Part 1 of this Schedule 14 the Owner may not assign, novate, transfer, sub-contract or dispose of in any other way either the benefit of this Schedule or any of its obligations under this Schedule.

17.2 The Borough Council may assign, novate, transfer, sub-contract or dispose of in any other way the benefit of the Funding or any of its obligations under this Schedule to any party the identity of whom is approved in writing by Homes England pursuant to Clause 17 (Transfer of the GDA).

18. **NOT USED**

the CBRE Project and/or Wider Project are located.

19. **CHANGES**

The Owner must advise the Borough Council immediately if the Owner want or require to make any changes to the CBRE Project including, but not limited to, changes to any of the Outputs, Milestones, Start Date, End Date and/or CBRE Project Completion Date and/or funding for the CBRE Project. Any changes must be agreed, in writing, with the Borough Council before taking effect.

20.4 The Borough Council reserves the right to use and/or provide to Homes England all data provided by the Owner in relation to the Funding for publicity or promotional purposes.

20. **PUBLICITY**

21. **FEES AND EXPENSES**

**CBRE shall within two (2) Business Days of demand on demand, pay to the Borough Council the amount of all costs and expenses (including legal fees and irrecoverable Value Added Tax (VAT) relating thereto) incurred by it:**

20.1 The Owner will ensure that, where appropriate, publicity is given to the CBRE Project and the Wider Project by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by Homes England and consequently by the Borough Council the Owner must comply with any guidance on publicity provided by or on behalf of the Borough Council from time to time.

21.1 in connection with the variation or amendment of under the Schedule and/or the GDA to the extent caused by or contributed to by CBRE, or enforcement or preservation of any rights under, the Schedule and/or under the GDA; or

20.2 The Owner must not publicise or promote the Funding without the Borough Council's prior written agreement.

21.2 in investigating any Event of Default which has occurred.

20.3 The Owner shall not refer to the Borough Council or Homes England or the Funding in any publicity and/or promotional material relating to the CBRE Project and/or the Wider Project without first receiving the Borough Council's written approval to such references save that it shall be deemed to be approved by the Borough Council to refer to the Borough Council only in any publicity and/or promotional material if such references are referring to or associated with the grant of planning permission for the CBRE Project and/or Wider Project; or to refer to the Borough Council only in relation to already publically available policies and procedures; or to refer to the Borough Council being the responsible for the administrative area within which

22. **ENTIRE AGREEMENT**

This Schedule constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior negotiations, representations and undertakings whenever occurring.

23. **FURTHER ASSURANCE**

On the written request of the Borough Council, the Owner will promptly execute and deliver or procure the execution and delivery of any further documents necessary to obtain for the Borough Council the full benefit of this Schedule.

24. **APPLICABLE LAW**

This Schedule is governed and interpreted in accordance with English Law and subject to the jurisdiction of the courts of England and Wales. If any provision of this Schedule is found to be invalid, illegal or unenforceable by a court of competent jurisdiction such

provs1011 shall be severed from it and the remainder of the provisions of this Schedule

shall otherwise remain in full force and effect.



**PART 4**

**1. MILESTONES**

**CBRE Project**

<b>MILESTONE</b>	<b>MILESTONE DATE</b>
Start Date of CBRE Project (being the date on which costs began to be incurred or begin to be incurred in relation to the CBRE Project, which shall for the avoidance of doubt include pre-construction works)	1 June 2022
CBRE Project Completion Date	31 December 2038
End Date	the earlier of the following dates: <ul style="list-style-type: none"> <li>• 23 September 2040;</li> <li>• three years from the Actual Project Completion Date (as such term is defined under the GDA); and</li> <li>• such other earlier date that the Borough Council notifies to the Owner in writing in compliance with Clause 3.4 of Part 1 of this Schedule.</li> </ul>

**2. OUTPUTS**

**CBRE Project**

<b>OUTPUT</b>	<b>Measure</b>
Number of residential units practically completed	815

## PART 5

### 1 PRE CONDITIONS IN RELATION TO ALL ADVANCES OF FUNDING

The Owner acknowledges and accepts the pre conditions in relation to all advances of Funding under the GDA and more particularly that the Owner's responsibilities are that:

- 1.1 The Owner will not constitute or cause any breach by the Borough Council of its obligations under the GDA;
- 1.2 The Owner will provide satisfactory evidence to the Borough Council (within five (5) Business Days of receipt of such notice from the Borough Council in relation to the same) that the Owner has complied with the Owner's representations and warranties set out in paragraph 4 of Part 3 of this Schedule 14;
- 1.3 **NOT USED**
- 1.4 The Owner will provide satisfactory evidence to the Borough Council (within five (5) Business Days of receipt of such notice from the Borough Council in relation to the same) that all contractors have been or will be appointed with sufficient capability, experience and funding to deliver the CBRE Project by the CBRE Project Completion Date to enable the Borough Council to comply with its obligations in paragraph 1.4 of Schedule 4 of the GDA.
- 1.5 **NOT USED**
- 1.6 The Owner will provide all information requested by the Borough Council in relation to the CBRE Project only to the Borough Council (within five Business Days of receipt of such notice from the Borough Council in relation to the same) to enable the Borough Council to provide the Cashflow and obtain approval from Homes England in relation to the Cashflow under the GDA.
- 1.7 The Owner has produced evidence satisfactory to the Borough Council that outline permission is issued for up to 815 homes.
- 1.8 **NOT USED**

### 2 NOT USED

## PART 6

### VIABILITY ASSESSMENT

**"Early Viability Surplus"** means as defined in this Deed or any other Planning Agreement in relation to the CBRE Project and/or the CBRE Site

**"Financial Information"** means such information reasonably requested by the Borough Council from the Owner pursuant to the terms of Part 2 of Schedule 2 of this Deed and/or any other Planning Agreement and any additional financial information to identify how the Early Viability Surplus or Surplus has been calculated as may be requested by Homes England pursuant to the terms of the GDA

**"Surplus"** means as defined in this Deed or any other Planning Agreement in relation to the CBRE Project and/or the CBRE Site

**"Viability Assessment"** means the method of viability assessment with agreed parameters and methodology as set out in Part 2 of Schedule 2 and Appendices 9 and 10 of this Deed or, in relation to any other Planning Agreement relating to the CBRE Project and/or the CBRE Site, a viability assessment which shall, (save for any Early Viability Assessment), follow the principles established in the VRT

**"Viability Review Template (VRT)"** means the template form for the Viability Review of a Viability Assessment and appended to this Deed at Appendix 5 to this Schedule.

The Owner warrants and confirms to the Borough Council that:

- a. it will comply with its obligations as set out within Part 2 of Schedule 2 of this Deed and will accept the inclusion of Viability Assessments in any Planning Agreements and will comply with any other obligations relating to such Viability Assessments included in a Planning Agreement relating to the CBRE Project and/or the CBRE Site; and
- b. within 10 Business Days of any request by the Borough Council the Owner will submit the Financial Information to the Borough Council.