

**DATED**

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**RUGBY BOROUGH COUNCIL**

and

**WARWICKSHIRE COUNTY COUNCIL**

and

**ST MODWEN HOMES LIMITED and MILLER HOMES LIMITED**

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO LAND NORTH OF ROUNDS GARDENS, RUGBY**

DRAFT

This deed is dated

2025

## Parties

- (1) **RUGBY BOROUGH COUNCIL** of Town Hall, Evreux Way, Rugby CV21 2RR (Council); and
- ~~(2) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall, Market Place, Warwick CV34 4RL (County Council); and~~
- ~~(3)~~ (2) **ST MODWEN HOMES LIMITED (Company Registration Number 09095920) C/O** Miller Homes 2 Centro Place Pride Park, Derby, England, DE24 8RF and **MILLER HOMES LIMITED (Company Registration Number SC255429) of Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH, (Owner)**

Together hereinafter referred to as (the “**Parties**”)

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## BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- ~~(B) The County Council is the local highway authority for the area in which the Site is situated.~~
- ~~(C)~~ (B) The Owner is the freehold owner of the Site registered with HM Land Registry under title number WK536969 [—]. St Modwen Homes Limited holds the legal title as bare trustee for Miller Homes Limited who is the sole beneficial owner of the freehold.
- ~~(D)~~ (C) The Owner submitted the Application to the Council on 19 February 2024 and on 12 March 2025 the Application was refused by Committee resolution for the reasons set out in the decision notice dated 19 March 2025.
- ~~(E)~~ (D) The Owner has submitted the Appeal and this Deed is to be submitted as part of the Appeal.
- ~~(F)~~ (E) In the event the Secretary of State grants the Appeal the obligations in this Deed will become binding and will be enforceable by the Council ~~and/or the County Council.~~
- ~~The Parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Owner and their successors in title.~~
- ~~For the purposes of Regulation 122 of the CIL Regulations and the Appeal the Council and the County Council are satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, that they are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.~~

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## Agreed terms

### 1. Interpretation

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

#### 1.1 Definitions:

**Act:** means the Town and Country Planning Act 1990 (as amended).

**Appeal:** means the planning appeal lodged against the refusal of the Application (given reference number APP/E3715/W/25/3373251 and to be determined by the Secretary of State or an Inspector appointed by the Secretary of State.

**Application:** means the application for full planning permission for the Development validated by the Council and allocated reference number R24/0111.

**CIL Regulations:** means the Community Infrastructure Levy Regulations 2010 or their statutory successor.

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

- ~~• demolition works;~~
- ~~• site clearance;~~
- ~~• diversion or installation of utilities;~~
- ~~• erection of site notices and advertisements;~~
- ~~• ground investigations;~~
- ~~• site survey works;~~
- ~~• temporary access construction works;~~
- ~~• archaeological investigation; and~~
- ~~• erection of any fences and hoardings around the Site~~

**Commence, "Commencing" and Commences** shall be construed accordingly.

~~**Contributions:** any financial contributions due to be paid to the Council or County Council in accordance with Schedule 1 and Schedule 2 of this Deed.~~

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**Council Monitoring Contribution:** the sum of £590 per Council obligation to be paid by the Owner to the Council and used towards the cost of the Council monitoring the implementation and compliance of this Deed.

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~~**County Council Monitoring Contribution:** the sum of £700 + (5 hours x £40 officer time x number of triggers relating to County Council obligations) to be paid by the Owner to the County Council used towards the cost of the Council monitoring the implementation and compliance of this Deed.~~

**Default Interest Rate:** 4% above the base lending rate of Lloyds Bank plc from time to time

**Development:** the redevelopment of the former football pitch and tennis courts associated with the adjacent employment use, including demolition of the existing pavilion and all other remaining structures and enclosures relating to the previous use of the Site, and the erection of 115 dwellings, accesses, landscaping, parking, drainage features and associated works as authorised by the Planning Permission.

**Dwelling:** means the residential units to be constructed on Site pursuant to the Planning Permission and “Dwellings” shall be construed accordingly.

**Expert:** means an independent person of at least 10 years' standing in the area of expertise relevant to the dispute to be agreed between the parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society.

~~**Index Linked:** means the All Items Index of Retail Prices (RPI) published by the Office of National Statistics (or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation notified in writing to the Owner by the Council.~~

**Inspector:** the planning inspector appointed by the Planning Inspectorate/Secretary of State in determination of the Appeal.

**NPPF:** means the National Planning Policy Framework published in December 2024 as may be further updated from time to time.

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**Occupation:** mean beneficial occupation of any part of the Development for the purposes permitted by the Planning Permission and this Deed other than occupation for the purposes of fitting-out and marketing and “Occupied” and “Occupy” and “Occupying” shall be construed accordingly. ~~“Occupier” shall be construed accordingly.~~

~~**Path Improvement Works Contribution:** the sum of £78,400 (seventy-eight thousand four hundred pounds) to be paid by the Owner to the County Council and~~

~~used towards lighting, widening and surfacing improvements to paths between York Street and Dale Street.~~

**Plan:** the plan attached to this Deed titled [ ]

**Planning Permission:** the planning permission for the Development that may be granted pursuant to the Appeal.

**Secretary of State:** the Secretary of State for Department of Housing, Communities and Local Government (or such other person or organisation who has the jurisdiction from time to time to determine the Appeal) including the Inspector who is appointed to act on their behalf

**Site:** means the land against which this Deed may be enforced as shown edged red on the Plan (but excluding highway)

~~**Sports Contribution:** the following sums to be paid by the Owner to the Council:~~

~~£30,000 to be used towards tennis provision at Caldecott Park or another suitable pitch within the accessibility of the Site; and~~

~~£200,000 to be used towards [football provision].~~

**Commented [CB5]:** Definition moved to Schedule 1

~~**Viability Assessment:** TBG~~

**Working Day:** a day other than a Saturday or Sunday or public holiday in England ~~and any other day the Council or County Council offices are not open.~~

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's successors in title and in the case of the Council ~~and the County Council~~ the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **this Deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.12 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 Any approval, consent, direction, authority, agreement or action to be given by the Council ~~or the County Council~~ under this Deed, acting reasonably, shall not be unreasonably withheld or delayed.

## **2. Statutory provisions**

- 2.1 The covenants, obligations and restrictions in this Deed:
- (a) are, to the extent they are lawfully able to be so made, made under section 106 of the Act with the intention that they should bind the Owner's legal and equitable interest in the Site as provided by that section and are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council ~~and the County Council~~ where applicable; and
  - (b) are otherwise made pursuant to other enabling powers including section 278 of the Highways Act 1980 Act, sections 111, 120 and 139 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other statutory and enabling powers in which case these obligations are covenants given by deed and are enforceable as such by the Council ~~and the County Council~~ where applicable.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the Act and so bind the Owner's interest in the Site.
- 2.3 If in determining the Appeal the Secretary of State or the Inspector expressly states in the decision letter that any planning obligation contained in this Deed:
- (a) is not a material planning consideration; or;
  - (b) can be given no weight in determining the Appeal; or

(c) does not constitute a reason for granting the Planning Permission in accordance with Regulation 122 of the CIL Regulations

then such planning obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed and the Owner shall be under no obligation to comply with them SAVE THAT the remainder of this Deed shall continue in full force and effect

### 3. Conditionality

With the exception of ~~clause clauses~~ [ ] (which shall come into effect upon the grant of the Planning Permission), this Deed is conditional on the grant of the Planning Permission and the Commencement of Development.

### 4. Covenants to the Council ~~and County Council~~

(a) The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations contained in ~~Schedule 1~~ Schedule 1.

~~(b) The Owner covenants with the County Council to observe and perform the covenants, restrictions and obligations contained in Schedule 2.~~

### 5. Covenants by the Council ~~and County Council~~

(a) The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule ~~2~~ 3.

~~(b) The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 4.~~

### ~~6. Indexation~~

~~6.1 Any sums referred to in Schedules 1 and [2] and paragraph 11 (b) shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.~~

~~The following formula will be used:~~

~~Amount after indexation = A x B/C~~

~~Where:-~~

~~A= the amount to be varied~~

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~~B= the index at the date at which the amount is due to be paid; and~~

~~C= the index at the date of this Deed~~

~~D= the resultant sum in pounds sterling payable under this Deed~~

~~and, for the avoidance of doubt, if D is less than A, then the net movement in the Index over the relevant period shall be deemed to be nil~~

~~6.2—All financial contributions payable to the Council shall be Index Linked.~~

~~6.3—Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.~~

## 6. Blue Pencil Clause

6.1 In the event that in determining the Appeal the Secretary of State or their appointed Inspector expressly states in their decision letter:

(a) that any of the covenants or planning obligations contained in this Deed (or any part of the said planning obligations) do not meet the Secretary of State's policy tests as set out in the NPPF and/or are not in accordance with the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended); and/or

(b) that a condition shall be imposed upon the Planning Permission instead of one or more of the planning obligations in this Deed.

then such covenant(s) or planning obligation(s) or part of such covenant(s) or planning obligation(s) as so identified by the Secretary of State or his appointed Inspector (as the case may be) shall be deemed to be of no effect and shall be scored through prior to registration as a local land charge notwithstanding the remaining provisions of this Deed which for the avoidance of doubt shall remain in effect and fully enforceable.

## 7. Duration

7.1 This Deed will end (to the extent it has not already been complied with) if the Planning Permission:

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- (a) Is quashed, revoked or otherwise withdrawn at any time so as to render this Deed or any part of it irrelevant, impractical or unviable; or
- (b) is modified by any statutory procedure without the consent of the Owner ~~and the Council~~; or
- (c) expires before Commencement.

## **8. Exemptions and Release**

- 8.1 References in this Deed to the Council ~~and the County Council~~ include the successors to its statutory functions.
- 8.2 The obligations in this Deed are not binding on or enforceable against:
  - (a) individual owners, occupiers or tenants of Dwellings constructed pursuant to the Planning Permission or their mortgagees or chargees or those deriving title from them; or
  - (b) any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of supplying utilities or public transport services.
- 8.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 8.4 Subject to clause 8.2 no person shall be liable for any breach of a covenant restriction or obligation contained in this Deed in relation to a part of the Site in which it does not have a freehold or leasehold interest

## **9. Local land charge**

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

## **10. Council's legal costs and monitoring fees**

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

~~the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.~~

10.12 The Owner shall pay to the Council prior to the Commencement of Development the Council Monitoring Fee.

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## 11. Interest on late payment

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

## 12. Miscellaneous

- 12.1 In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act to carry out the Development otherwise than in accordance with the conditions attached to the Planning Permission (and for no other purpose whatsoever) references in this Deed to the Application, Development and Planning Permission shall be deemed to include any such subsequent planning applications, development and planning permissions as authorised pursuant to section 73 of the 1990 Act and this Deed shall henceforth take effect and be read and construed accordingly unless the Council confirms that this Clause shall not apply and a further deed is required to bind the new permission by the terms of this Deed and/or to modify the obligations secured by this Deed.
- 12.2 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 12.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 12.4 No waiver (whether expressed or implied) by the Council ~~or the County Council~~ of any breach or default in performing or observing any of the obligations covenants undertakings terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council ~~or the County Council~~ from enforcing any of the relevant obligations covenants undertakings terms or conditions or for acting upon any subsequent breach or default of the same

### **13. Dispute Provisions**

- 13.1 If a dispute between the parties persists beyond 10 Working Days and relates to any matter contained in this Deed (excluding any matter of law), the dispute may be referred to the Expert by any party to the dispute.
- 13.2 The Expert will act as an expert and not as an arbitrator.
- 13.3 Each party to the dispute will bear its own costs and the Expert's costs will be paid as determined by him or in the event of failure to determine, equally by parties to the dispute.
- 13.4 The Expert will be required to give notice to each of the parties, inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to the parties to the dispute an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material.
- 13.5 The Expert will be appointed subject to an express requirement that he must reach his decision and communicate it to the parties within the minimum practical timescale allowing for the nature and complexity of the dispute, and in any event not more than 20 Working Days from the date of his appointment to act.
- 13.6 The Expert's decision will be given in writing with reasons and in the absence of manifest error or fraud will be binding on the parties.

### **14. Cancellation of entries**

- 14.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.
- 14.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to [Error! Bookmark not defined.](#) clause [ ] the Council will cancel all entries made in the local land charges register in respect of this Deed.

### **~~15. Disputes~~**

~~Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:~~

- ~~(a) the tribunal shall consist of [one] arbitrator appointed jointly by the parties;~~
- ~~(b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;~~
- ~~(c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and~~
- ~~(d) the seat of the arbitration shall be [London].~~

#### **16.15. No fetter of discretion**

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

#### **17.16. Waiver**

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

#### **18.17. Agreements and Declarations**

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

#### **19.18. NOTIFICATIONS**

20.1 The Owner will notify the Council and the County Council of the following events:

20.1.1 Upon Commencement of Development;

~~Upon occupation of the 1<sup>st</sup> Dwelling~~

20.1.2 Upon ~~Occupation~~~~Disposal~~ of 75% of the Dwellings.

20.2 Any notice or other written communication to be served on a party or given by one party to any other under the provisions of this Deed will be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by

recorded delivery post to the party on whom it is to be served or to whom it is to be given and will conclusively be deemed to have been received on:

20.2.1 if delivered by hand, the next Working Day after the day of delivery;

20.2.2 if sent by post, the day 2 Working Days after the date of posting;

20.2.3 if sent by recorded delivery, at the time delivery was signed for;

20.2.4 in respect of notices to the Council, if sent by email, by noon on the day following the date of the email.

~~20.3 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.~~

~~20.4 The address for any notice or other written communication shall be within the United Kingdom.~~

~~20.5 Where proceedings have been issued in the Courts of England the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.~~

20.6 A notice or communication will be served or given:

20.6.1 on the Owner at the address herein contained or such other address as notified in writing to the Council ~~and the County Council~~ from time to time, marked for the attention of the ~~Owner/Developer~~.

20.6.3 on the Council at Town Hall, Evreux Way, Rugby, CV21 2RR or such other address notified in writing to the Owner from time to time, marked for the attention of the **Chief Officer for Growth and Investment** and if sent by email, emailed to RBC.Planning@rugby.gov.uk also marked for the attention of the **Chief Officer for Growth and Investment**; and

20.6.4 on the County Council at Shire Hall, Warwick, Warwickshire CV34 4RP or such other address notified in writing to the Owner from time to time, marked for the attention of the Infrastructure Planning Lead.

~~20.7 Any notice or other written communication to be given by the Council or County Council will be deemed valid and effectual if on its face it is signed on behalf of the Council or the County Council by an officer or duly authorised signatory.~~

The Owner agrees with the Council to give the Council and County Council **immediate** written notice **as soon as reasonably practicable** of any change in ownership of any of its

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interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan but for the avoidance of doubt transfers of individual Dwellings to individual owners/occupiers will not require the service of such a notice.

#### **20-19. Third party rights**

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

#### **21-20. Value added tax**

21-20.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

21-20.2 If any VAT is at any time chargeable on any supply made by the Council, ~~the County Council~~ or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

#### **22-21. Jurisdiction**

22-21.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

The common seal of [NAME  
OF COUNCIL]

was affixed to this document  
in the presence of:

Authorised signatory

Signed as a deed by [NAME  
OF OWNER] in the presence  
of:

.....

[SIGNATURE OF Owner]

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND  
OCCUPATION] OF  
WITNESS]

Executed as a deed by  
[NAME OF MORTGAGEE]

acting by [NAME OF  
FIRST DIRECTOR], a director  
and [NAME OF SECOND  
DIRECTOR/SECRETARY], [a  
director OR its secretary]

.....

[SIGNATURE OF FIRST  
DIRECTOR]

Director

.....

[SIGNATURE OF SECOND  
DIRECTOR OR SECRETARY]

[Director OR Secretary]

OR

Executed as a deed by  
[NAME OF MORTGAGEE]

acting by [NAME OF  
DIRECTOR] a director, in the  
presence of:

.....

[SIGNATURE OF DIRECTOR]

Director

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.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND  
OCCUPATION] OF  
WITNESS]

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## Schedule 1—Covenants to the Council

### PART A

#### 1. — Sports Delivery and Contribution

##### 1. — Interpretation of Part A, Schedule 1

1.1. — In this Part A, Schedule 1, the following expressions shall have the meanings set out below:

<u>“Sports Contribution”</u>	<u>means the sum of £230,000 (two hundred and thirty thousand pounds) to be paid by the Owner to the Council which shall comprise of:</u>  <u>1. £30,000 to be used towards tennis provision at Caldecott Park or another suitable pitch within the accessibility of the Site; and</u>  <u>2. £200,000 to be used towards football pitch enhancements within [ — ] (the provision of pavilion facilities comprising of 1,247.7 sqm floorspace and associated car parking and [football provision]);</u>
<u>“Sports Scheme”</u>	<u>means a scheme: for the provision of pavilion facilities comprising of 1,247.7 sqm floorspace and associated car parking associated with the site the Sports Contribution for football is used</u>

	<u>toward:</u>
--	----------------

The Owner covenants to pay to the Council the Sports Contribution [—].

- ~~— Prior to first Occupation of any Dwelling to pay to the Council the Sports Contribution; and~~
- ~~— Not to cause or permit first Occupation of any Dwelling until the Sports Contribution has been paid to the Council;~~
- ~~— Prior to Commencement of Development to submit a Sports Scheme to the Council for its approval in writing and~~
- ~~— Not to cause or permit Commencement of Development until the Sports Scheme has been approved in writing by the Council;~~
- ~~— To layout construct and deliver the Sports Scheme capable for use prior to first Occupation of any Dwelling;~~

**PART B SCHEDULE 1**

**Viability Assessment**

1. Interpretation of **Part B**, Schedule 1
- 1.1. In this **Part B**, Schedule 1, the following expressions shall have the meanings set out below:

<b>“Additional Information”</b>	means the information requested by the Council acting reasonably pursuant to paragraphs <b>2.3, 6.4</b> and/or <b>6.7</b> of this <b>Part B</b> of Schedule 1;
<b>“Affordable Housing Contribution”</b>	means a contribution to be made if there is a Surplus and to be used by the Council towards Affordable Dwellings;
<b>“Affordable Dwelling”</b>	Means a <del>unit of occupation</del> Dwelling which falls within the definition of Affordable Housing;
<b>“Affordable Housing”</b>	has the meaning given in Annex 2 of the <del>NPPF National Planning Policy Framework</del> (December 2024 revision);
<b>“Affordable Housing Provider”</b>	
<b>“Affordable Housing Scheme”</b>	

**Commented [MH10]:** TBC

**Commented [MH11]:** We will only be providing a contribution in lieu of AH not on site delivery if there is a surplus

"Application Stage Build Costs"	means <del>£</del> being the estimated cost of [ ] as determined by the Application Stage Viability Review Appraisal
"Application Stage GDV"	Means [£ ] being the estimated gross development value of the Development established by the Application Stage Viability Review Appraisal <del>and which takes in account any Public Subsidy.</del>
"Application Stage Viability Appraisal"	means the Financial Viability Assessment (FVA) relating to the Development dated January 2024 <del>and the addendum report dated June 2024 asnd</del> prepared by Savills <del>attached to this Deed at Appendix [ ]:</del>
<del>"Average Intermediate Value of Intermediate Housing"</del>	<del>means the average value of Intermediate Housing floorspace per square feet (as applicable) at the Late Stage Review Date based on the information provided to establish the Late Stage Review Actual GDV.</del>
"Average Open <del>Value</del> Market Housing <del>Value</del> "	means the average value of Market Dwellings floorspace per square feet <del>the Late Stage Review Date</del> based on the information provided to establish the Late Stage Review Actual GDV
"Build costs"	means the build costs comprising construction of the Development <del>and associated infrastructure supported by evidence of these costs to the Council's reasonable satisfaction</del> including but not

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	<p>limited to:</p> <p>(a) details of payments made or agreed to be paid in the relevant building contract;</p> <p>b) receipted invoices;</p> <p>(c) costs certified by the Owner's quantity surveyor, costs consultant or agent;</p> <p><del>but for the avoidance of doubt such build costs exclude:</del></p> <p><del>professional, finance, legal and marketing costs;</del></p> <p><del>(ii) all internal costs of the Owner including but not limited to project management costs, overheads and administration expenses; and</del></p> <p><del>(iii) any costs arising from Fraudulent Transactions;</del></p>
<b>“Deficit”</b>	means no Surplus has arisen;
<b>“Disposal”</b>	<p>means for the purposes of this Part B, Schedule 1:</p> <p>(a) the sale of the freehold of a Dwelling; or</p> <p>(b) the grant of a registrable lease of a Dwelling for a term of at least 7 years; or</p> <p>(c) the grant of an assured shorthold tenancy or a short-term let in respect of a Dwelling of the</p>

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**Commented [MH14]:** Cobi - this overlaps with the definition of Sale as both refer to the sale of a freehold Dwelling. Can the council clarify it's position as it is confusing

	<p><u>Development</u></p> <p>and the terms "Dispose", "Disposals" and "Disposed" and "Disposed of" shall be construed accordingly;</p>
<b>"Early Stage Review"</b>	means the upwards-only review of the Application Stage Viability Appraisal and the financial viability of the Development required to be undertaken at the Early Stage Review Date unless Substantial Commencement has occurred on or before the Substantial Commencement Target Date;
<b>"Early Stage Review Build Costs"</b>	<p>means the sum of:</p> <p>(a) the estimated Build Costs remaining to be incurred; and</p> <p>(b) the Build Costs actually incurred</p> <p>at the Early Stage Review Date</p>
<b>"Early Stage Review Date"</b>	means, in the event that an Early Stage Review is undertaken in accordance with this <u>Part B</u> , Schedule 1, the date of the submission of the Early Stage Viability Assessment pursuant to paragraph <u>3.1</u> of this <u>Part B</u> , Schedule 1;
<b>"Early Stage Review GDV"</b>	<p><u>means the sum of:</u></p> <p><u>(a) the estimated Market Value at the Early Stage Review Date of any Dwelling within the Development that has been Disposed of but not Sold based on</u></p>

**Commented [MH15]:** This is confusing. The definition of Dispose and Sold both refer to the freehold sale of a Dwelling.

	<p><u>detailed comparable evidence; and</u></p> <p>(b) the value of all <u>netgross</u> receipts from any Sale of a Dwelling within the Development prior to the Early Stage Review Date</p>
<b>“Early Stage Review Statement”</b>	<p>means a written statement that contains the relevant supporting information and a calculation of whether in the Owner’s view a Surplus has arisen and whether any Financial Contributions <u>are payable</u> and/or any Affordable Housing <u>Contributions are payable can be provided;</u></p>
<b>“Early Stage Viability Assessment”</b>	<p>means a further assessment of the viability of the Development from that undertaken pursuant to the Application Stage Viability Appraisal using Formula 1;</p>
<b>“External Consultant”</b>	<p>means the external consultant(s) which may be appointed by the Council (and <u>to be</u> approved by the Owner) to assess the information submitted pursuant to paragraph 3.1.1 and paragraph 6.2 (as applicable).</p>
<b><u>“Financial Contributions”</u></b>	<p><u>means the following:</u></p> <p><u>contributions that the Surplus calculated pursuant to the Relevant Reviews</u></p>

**Commented [MH16]:** Contributions to be listed here



<b>"Formula 1"</b>	means the formula identified as "Formula 1" within [ ] to this Schedule.
<b>"Formula 2"</b>	means the formula identified as "Formula 2" within [ ] to this Schedule.
<b>"Formulas"</b>	means either Formula 1 or Formula 2 as the case may be.
<b>"Fraudulent Transaction"</b>	Means:  (a) a transaction the purpose or effect of which is to artificially reduce the Late Stage Review Actual GDV and/or the Late Stage Review Actual Build Costs; or (b) a <del>Sale Disposal</del> that is not an arm's length third party bona fide transaction
<b><u>"Indexed"</u></b>	<del>means the relevant sum shall be increased (or decreased as applicable) by an amount which reflects the movement (if any) in the Royal Institution of Chartered Surveyors Building Cost Information Service All-In Tender Price Index from the date of this Deed to the date the sum becomes due to be paid;</del>
<b>"Late Stage Review Date"</b>	means the date on which seventy five per cent (75%) of the Dwellings have been <del>Disposed of or</del> Occupied <del>(whichever is the earlier);</del>

<b>"Late Stage Review Actual Build Costs"</b>	means the Build Costs incurred at the Late Stage Review Date <del>which for the avoidance of doubt shall exclude any contingency allowance</del>
<b>"Late Stage Review Actual GDV"</b>	means the sum of:  (a) the value of all <del>netgross</del> receipts from any Sale of a Dwelling prior to the Late Stage Review Date;  <del>(b) the Market Value of any Dwelling that has been otherwise Disposed prior to the Late Stage Review Date but not Sold; and</del>  <del>(c) all Public Subsidy and any Development related income from any other sources to be assessed by the Council excluding any Public Subsidy repaid by the Owner to the Council</del>  <del>(d) Commercial Revenue</del>
<b>"Late Stage Review Estimated GDV"</b>	means the estimated Market Value at the Late Stage Review Date of any Dwelling that has yet to be <del>Sold</del> <del>Disposed of</del> based on comparable evidence
<b>"Late Stage Review Estimated Build Costs"</b>	means the estimated Build Costs remaining to be incurred at the Late Stage Review Date
<b>"Late Stage Review Statement"</b>	means a written statement that contains the relevant supporting information and a calculation of whether in the Owner's view a Surplus has arisen and whether any Financial Contributions <del>are payable</del>

Commented [MH17]: Cobi - please provide a definition

	and/or any Affordable Housing <del>Contributions are payable</del> <u>can be provided</u> ;
<b>"Late Stage Viability Assessment"</b>	means a further assessment of the viability of the Development in accordance with the Formula 2 at the Late Stage Review Date;
<b>"Market Value"</b>	<p>means the price at which the sale of the relevant property interest would have been completed unconditionally for cash consideration at the Early Stage Review Date or the Late Stage Review Date ( as applicable) based on detailed comparable market evidence, including evidence of rental values achieved for any Dwelling within the Development which has been <u>Disposed but not Sold</u> assuming:</p> <p>(a) a willing seller and a willing buyer;</p> <p>(b) that, prior to the date of valuation, there has been a reasonable period of not less than <del>three</del> <u>six</u> months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) of the price and terms and the completion of the sale;</p> <p><del>(c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and</del></p> <p>(d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion</p>

**Commented [MH18]:** See earlier comments

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**Commented [MH19]:** Unless this can be defined, it is not accepted

<b>"Public Subsidy"</b>	means funding from the Council and any additional public subsidy secured by or on behalf of the Owner to support the delivery of the Development
<b>"Relevant Review"</b>	means either the Early Stage Review or the Late Stage Review as the case may be and the term <b>"Relevant Reviews"</b> shall be construed accordingly";
<b>"Review Date"</b>	means either the Early Stage Review Date or the Late Stage Review Date as the case may be;
<b>"Sale"</b>	means:  (a) the sale of the freehold of a Dwelling; or  (b) the grant of a lease of a Dwelling with a term of 125 years or more and subject to nominal rent; and  "Sold" shall be construed accordingly
<b>"Substantial Commencement"</b>	means the date on which Commencement of Development occurs;
<b>"Substantial Commencement Target Date"</b>	means the date 24 months from but excluding the date of grant of the Planning Permission
<b>"Surplus"</b>	means the surplus profit (if any) amount calculated pursuant to the Formulas carried out as part of the Early Stage Viability Assessment or the Late Stage Viability Assessment (as the case may be).

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Commented [MH20]: Cobi - do you mean from the day after PP is granted?

## 2. Substantial Commencement

2.1. Where Substantial Commencement has not occurred on or before the Substantial Commencement Target Date the Owner will carry out and submit an Early Stage Review in accordance with the provisions of this ~~Part B~~ Schedule 1. In the event Substantial Commencement occurs before the Substantial Commencement Target Date, the obligations in this ~~Part B~~ Schedule 1 do not apply.

2.2. ~~The Owner shall notify the Council of the date on which it considers that Substantial Commencement has been achieved no later than 10 Working Days after such date and such notice shall be accompanied by documentary evidence to enable the Council to assess independently whether the Substantial Commencement has been achieved and whether it was achieved on or before the Substantial Commencement Target Date.~~

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**Commented [MH21]:** Cobi - what are the council expecting to see here? Substantial Commencement will be the commencement of development so notification that commencement has occurred should suffice

2.3. ~~No later than ten (10) Working Days after receiving a written request from the Council, the Owner shall provide to the Council any additional documentary evidence reasonably requested by the Council to enable it to determine whether the Substantial Commencement has been achieved on or before the Substantial Commencement Target Date and the Council shall make any such written request no later than ten (10) Working Days after receiving the notice pursuant to paragraph 2.2 above.~~

2.4. ~~Following the Owner's notification pursuant to paragraph 2.2 of this Part B, Schedule 1, the Owner shall afford the Council access to the Site to inspect and assess whether or not the works which have been undertaken achieve Substantial Commencement (the "Inspection") PROVIDED ALWAYS THAT the Council shall:~~  
~~2.4.1. provide the Owner with reasonable written notice of its intention to carry out such an Inspection;~~

**Commented [MH22]:** This is unnecessary and onerous. As above, CoD will be the trigger and the council would usually rely on a notice from the owner confirming the same.

~~2.4.2. comply with relevant health and safety legislation; and~~

~~2.4.3. at all times be accompanied by the Owner or its agent.~~

2.5. No later than one month after the Council receives:

~~2.5.1. notice pursuant to paragraph 2.2 of this Part B, Schedule 1; or~~

~~2.5.2. if the Council makes a request under paragraph 2.3 of this Part B, Schedule 1, for Additional Information;~~

the Council shall ~~inspect the Site and thereafter~~ provide written confirmation to the Owner ~~within 10 Working Days of the Inspection~~ as to whether or not the Council considers that Substantial Commencement has been achieved and whether it was achieved on or before the Substantial Commencement Target Date.

2.6. ~~If the Council notifies the Owner that the Council considers that Substantial Commencement has not been achieved then paragraph 2.2 of this Schedule 12 shall continue to apply mutatis mutandis until the Council has notified the Owner pursuant to paragraph 2.5 of this Schedule 2 (or the matter has been referred by either party to the Expert and the Expert has determined) that the Substantial Commencement has been achieved.~~

**Commented [MH23]:** Cobi - If the Council does not think that CoD has been achieved then they should have to provide evidence as to why.

### 3. Submission of Early Stage Viability Assessment and other information

3.1 Where Substantial Commencement has not occurred before the Substantial Commencement Target Date (as determined by the Council under paragraph 2.5 and/or paragraph 2.6 of this Part B Schedule 1 or pursuant to dispute resolution in accordance with Clause [ ]) the Owner shall submit:

- 3.1.1 an Early Stage Viability Assessment to the Council together with the Early Stage Review Statement no later than 30 Working Days after the date on which the Owner is notified pursuant to paragraph 2.5 of this

~~Part B~~, Schedule 1 or pursuant to dispute resolution in accordance with Clause [ ] that Substantial Commencement has not been achieved;

~~3.1.2~~ evidence to demonstrate whether a Deficit or Surplus has arisen;

~~3.1.3~~ where the Early Stage Viability Assessment shows a Surplus, the amount of that Surplus ~~shall be divided equally between the Owner and the Council and the Council shall utilise their share of the Surplus towards either the Affordable Housing Contribution or Financial Contributions that is to constitute either the on-site provision of Affordable Housing or the Financial Contributions payable.~~

#### **4. Assessment of development viability supporting evidence and other information**

~~4.1.~~ The Council shall assess the information submitted pursuant to paragraph 3 of this ~~Part B of~~ Schedule 1 ~~and assess whether in its view Affordable Dwellings are required to be delivered and/or the Financial Contributions are payable in accordance with Formula 1 and for the avoidance of doubt the Council will be entitled to rely on its own evidence in determining inputs into Formula 1 subject to such evidence also being provided to the Owner and the Owner being given the opportunity to make representations in respect of such evidence~~ (and for the avoidance of doubt the Council's evidence may be referred to an Expert pursuant to clause [ ] of this Deed).

4.2 The Council may appoint an External Consultant to assess the Information submitted pursuant to paragraph 3.1.1 of this Schedule ~~12~~.

4.2. If the Council (acting reasonably and properly) and/or an External Consultant (acting reasonably and properly) makes a request for further information in respect of any of the documents submitted pursuant to paragraphs 3.1.1 - 3.1.3 inclusive of

this ~~Part B~~, Schedule 1 above, the Owner shall within 10 (ten) Working Days of receipt of such request provide such information as has been reasonably and properly requested and this process shall be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in their view ~~there is a Surplus either the on-site provision of Affordable Housing can be delivered or the Financial Contributions are payable~~. PROVIDED THAT the Council must conclude their assessment within [ ] Working Days of receiving the Early Stage Viability Assessment

**Commented [MH24]:** Cobi - Shouldn't this just be whether there is a surplus? We will not be providing AH units on site as that would require us to amend the planning permission. Therefore it is for the council to decide what the 50% of the surplus should be used towards if there is a surplus

4.3. ~~In agreeing the Early Stage Viability Assessment the parties shall act reasonably~~ Owner shall owe the Council a duty of good faith in connection with the provisions of this Part B, Schedule 2:

4.4. The Owner undertakes in relation to the preparation of the Early Stage Viability Assessment:

4.4.1. the Early Stage Viability Assessment will be produced on an open book basis under which there shall be full and frank disclosure of all relevant information;

4.4.2. all costs included in the Early Stage Viability Assessment shall be reasonably and properly attributable to the Development ~~and associated infrastructure~~; and

4.4.3. there will be no double counting of costs or revenue

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4.5. ~~When the Council and/or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 3 of this Part B of Schedule 1, the Council shall notify the Owner in writing of the Council's decision as to whether:~~

~~(a) any Affordable Dwellings are required and whether the Affordable Housing Scheme submitted pursuant to paragraph 5.3 below is approved or~~

~~(b) the Financial Contributions are payable.~~

**Commented [MH25]:** Cobi - similar to my query above, if there is a surplus, the council will receive 50% and then can apply it to the AH or financial contributions.

4.6. The Owner shall not Occupy or permit Occupation of the [ ] unless and until:

**Commented [CB26]:** Melissa: TBC



~~4.6.1. the Council has notified the Owner pursuant to paragraph 2.5 of this Part B, Schedule 1 that the Substantial Commencement has been achieved on or before the Substantial Commencement Target Date;~~

**Commented [MH27]:** If we have started on site, we cannot have occupations delayed for this reason.

~~4.6.2. the Council confirms in writing to the Owner that the Early Stage Viability Assessment is approved and has resulted in a Deficit; or~~

~~4.6.3. the Expert following dispute resolution subject to Clause [ ] confirms the Early Stage Viability Assessment has resulted in a Deficit; or~~

~~4.6.4. the Council confirms in writing to the Owner that the Early Stage Viability Assessment is approved and has resulted in a Surplus, and either:~~

~~(a) the amount of the Financial Contributions are approved;~~

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~~(b) the provision of Affordable Dwellings are required and the Affordable Housing Scheme submitted pursuant to paragraph 5.3. below has been approved; or~~

~~4.6.5. the Expert following dispute resolution subject to Clause [ ] confirms the Early Stage Viability Assessment has resulted in a Surplus and confirms that either:~~

~~(a) the amount of the Financial Contributions are approved;~~

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~~(b) the provision of Affordable Dwellings are required and the Affordable Housing Scheme submitted pursuant to paragraph 5.3 below has been approved~~

~~4.7. The Owner covenants with the Council to pay the reasonable and proper costs incurred by the Council including those of the External Consultant in approving the Early Stage Viability Assessment within 20 Working Days of receipt of a demand from the Council.~~

**Commented [MH28]:** The council should be responsible for their own costs

## **5. ~~Payment of Financial Contributions or Provision of on-site Affordable Housing Contributions~~**

5.1 Prior to Occupation of the [ ] Dwelling the Owner shall if a Surplus has been determined by approval of the Early Stage Viability Assessment pursuant to paragraph 4.5 of this ~~Part B~~, Schedule 1 pay to the Council 50% of the Surplus; ~~and~~

Commented [CB29]: TBC

~~5.1.1 if the Council shall so elect (acting reasonably), that the Owner shall either:-~~

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~~5.1.1.1 provide the Affordable Dwellings; or~~

~~5.1.1.2 pay the Financial Contributions to the Council~~

5.2 Not to Occupy or permit Occupation of the [ ] Dwelling unless and until a Surplus has been determined by approval of the Early Stage Viability Assessment pursuant to paragraph 4.5 of this ~~Part B~~, Schedule 1 and the Owner has paid the ~~Financial Contributions~~.50% of the Surplus to the Council.

Commented [CB30]: Same as above

~~5.3 In the event that Affordable Dwellings are required by the Council pursuant to paragraph 5.1.1.1 above then the parties shall, acting reasonably and having regard to local planning policy, agree an Affordable Housing Scheme.~~

## 6. Late Stage Viability Assessment

6.1 The Owner shall notify the Council of the anticipated Late Stage Review Date not less than 20 Working Days in advance of that date.

6.2 Not later than 20 Working Days after the Late Stage Review Date the Owner shall submit the Late Stage Viability Assessment together with the Late Stage Review Statement to the Council to demonstrate whether a Deficit or Surplus has arisen.

6.3 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 6.2 of this Schedule ~~12~~.

~~6.4 In the event that the Council and/or an External Consultant acting reasonably and properly require further information or supporting evidence in relation to the Late Stage~~

Viability Assessment the Owner shall provide the Additional Information to the Council within 10 Working Days of receipt of the request for Additional Information.

**Commented [MH31]:** Cobi - this is already set out below

6.5 The Council shall confirm in writing to the Owner when it has received a valid and complete Late Stage Viability Assessment ("Validation Date") but such confirmation shall not amount to agreement of any of the matters contained in the Late Stage Viability Assessment nor preclude the Council from seeking further relevant information during the course of negotiations pursuant to paragraph 6.3 of this [Part B, Schedule 1](#)

6.6 In the event that the Council and/or an External Consultant [acting reasonably and properly](#) requires further development viability information or supporting evidence of the same then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 Working Days of receiving the relevant request and this process [may be repeated](#) until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in its view [any on there is a Surplus PROVIDED THAT the Council must conclude their assessment within \[ \] Working Days of receiving the Late Stage Viability Assessment site Affordable Housing can be delivered or any Financial Contributions are required as calculated in accordance with Formula 2.](#)

**Commented [MH32]:** Cobi - this cannot be open ended - there must be a point where it will need to be referred to an expert instead

**Commented [MH33]:** Again, shouldn't this just be if a surplus has arisen?

6.7 If the Council and/or External Consultant determines following receipt of the information submitted pursuant to paragraph 6.2 of this [Part B, Schedule 1](#) that the Late Stage Review Date has not occurred, the Council may require the Owner [promptly to submit Additional Information pursuant to paragraph 6.6 of this Part B, Schedule 1 or to re-submit the information required under paragraph 6.2 of this Part B, Schedule 1 upon the occurrence of the Late Stage Review Date \(as determined by the Council agreed between the parties\).](#)

6.8. If the Council's assessment (or the Expert's determination) of the Late Stage Viability Assessment concludes that a Surplus arises, the Surplus shall [Owner shall be divided equally between the Owner and the Council and the Council shall utilise their](#)

share of the Surplus towards either the Affordable Housing Contribution or Financial Contributions:

6.8.1.1 pay any such Surplus to the Council as the Financial Contributions in accordance with paragraph 7 below, or

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6.8.2 provide the on-site delivery of Affordable Housing in accordance with paragraph 7 below:

6.10 The Owner shall pay the Council's costs which are reasonably and properly incurred in assessing the information submitted pursuant to paragraph 6.2 (and where appropriate paragraph 6.6) of this Part B, Schedule 1 including those of the External Consultant within 20 Working Days of receipt of a written request for payment.

## 7. Payment of Financial Contributions

7.1 Prior to Occupation of the [ ] Dwelling the Owner shall if a Surplus has been determined by approval of the Late Stage Viability Assessment pursuant to paragraph 6.8 of this Part B, Schedule 1 pay to the Council 50% of the Surplus; and

Commented [CB34]: TBC

7.1.1 if the Council shall so elect (acting reasonably), that the Owner shall either:-

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7.1.1.1 provide the Affordable Dwellings; or

7.1.1.2 pay the Financial Contributions to the Council

7.2 Not to Occupy or permit Occupation of the [ ] Dwelling unless and until a Surplus has been determined by approval of the Late Stage Viability Assessment pursuant to paragraph 6.8 of this Part B, Schedule 1 and the Owner has paid to the Council 50% of the Surplus the Financial Contributions:

Commented [CB35]: TBC

7.3 In the event that Affordable Dwellings are required by the Council pursuant to paragraph 7.1.1.1 above then the parties shall, acting reasonably and having regard to local planning policy, agree an Affordable Housing Scheme.

#### Formula

**Commented [CB36]:** Formulas to be used may be subject to revision

### 8. FORMULA 1

"Surplus profit" =  $((A - B) - (C - D)) - P$

Where:

A= Early Stage Review GDV (£)

B = Application Stage GDV (£)

C= Early Stage Review Build Costs (£)

D= Application Stage Build Costs (£)

P=  $(A-B) \times Y$

Y= Target Return (%)

Notes: (A - B) represents the change in GDV from the date of Planning Permission to the date of review. (C - D) represents the change in build costs from the date of Planning Permission to the date of review. P represents developer profit on change in GDV. Y represents the return as agreed in the Application Stage Viability Appraisal.

### FORMULA 2

X = Surplus profit

$X = ((A + B - C) - (D + E - F)) - P$

Where:

A= Late Stage Review Actual GDV(£)

B = Late Stage Review Estimated GDV (£ )

C= Application Stage GDV (£)

D = Late Stage Review Actual Build Costs (£)

E = Late Stage Review Estimated Build Costs(£)

F= Application Stage Build Costs (£)

$P = (A + B - C) * Y$

Y = Target Return (%)

**Commented [MH37]:** It would be prudent to include the fixed percentage - is this 20%?

Notes: (A + B - C) represents the change in GDV from the date of the Planning Permission (or previous review if triggered) to the Late Stage Review Date.

(D + E - F) represents the change in build costs from the date of the Planning Permission (or previous review if triggered) to the Late Stage Review Date.

P represents developer profit on change in GDV.

Y represents the return as agreed in the Application Stage Viability Appraisal.

**Commented [MH38]:** As above

0.6 represents the 60 per cent of the surplus profit to be used by the Council for additional affordable housing, after the developer's profit (P) has been deducted.

## **PART G**

### **BIODIVERSITY NET GAIN**

#### **DEFINITIONS**

In this Schedule the following words and phrases shall have the meanings ascribed to them:

<b>"Biodiversity Impact Assessment"</b>	means the use of the most current and locally adopted Defra Biodiversity Offsetting Metric to calculate the biodiversity impact of the Development as a whole measured in Biodiversity Units
<b>"Biodiversity Loss"</b>	means a negative Biodiversity Unit score for the Development as a whole
<b>"Biodiversity Offsetting Scheme"</b>	means a scheme to compensate for any Biodiversity Loss, either through on-site mitigation and/or by off-site offsetting and/or by payment of an Offsetting Contribution. The scheme shall include the timing of the submission of the relevant details and/or payment of an Offsetting Contribution as the case may be, relating to the compensation
<b>"Biodiversity Score"</b>	means the outcome of the calculation, which is carried out by the Biodiversity Impact Assessment, such outcome to be measured in Biodiversity Units
<b>"Biodiversity Unit(s)"</b>	means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value
<b>"Defra Biodiversity Offsetting Metric"</b>	means the Defra mechanism to quantify impacts on biodiversity that allows biodiversity losses and gains affecting different habitats to be compared and ensure offsets were sufficient to compensate for residual losses of biodiversity, such mechanism to be that applicable to the area in which the Site is situated at the time of submission of the Biodiversity Impact Assessment
<b>"Offsetting Contribution"</b>	means the payment of a sum of money to the County Council as part of a Biodiversity Offsetting Scheme; such sum to be calculated in accordance with the WCG Financial Contribution Calculator and to be used by the County Council for funding long-term conservation projects in the area surrounding the Development which will deliver biodiversity gain. The total sum of the Offsetting Contribution paid in relation to the Development shall not exceed [ ]
<b>"WCG Financial Contribution"</b>	means the document titled [ ] and dated [ ] the

<u>Calculator"</u>	<u>summary of which is attached at Appendix 3 or any updated version of that document adopted by the County Council from time to time and in force at the date of submission of the relevant Biodiversity Offsetting Scheme</u>
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## **2. BIODIVERSITY OFFSETTING**

### **2.1 The Owner covenants that:**

#### **2.1.1 no Development shall be Commenced unless and until:**

(a) a Biodiversity Impact Assessment has been submitted to and agreed in writing by the County Council;

(b) where the Biodiversity Impact Assessment shows a Biodiversity Loss a Biodiversity Offsetting Scheme has also been submitted and agreed in writing by the County Council;

2.1.2 the written approval of the County Council to the Biodiversity Offsetting Scheme shall not be issued before the arrangements necessary to secure the delivery of any offsetting measures proposed by the Biodiversity Offsetting Scheme have been agreed with the County Council;

2.2 The Owner covenants that any Biodiversity Offsetting Scheme shall be implemented in full as part of the Development in accordance with the requirements of the approved details or any variation agreed in writing between the Owner and the County Council from time to time;



**Schedule 2Schedule 1 Covenants to the County Council**

**1. A426 Newbold Road/Oliver Street Contribution**

- 1.1 The Owner covenants to pay the A426 Newbold Road/Oliver Street Contribution to the County Council prior to first Occupation of the Development (or such alternative trigger as may be agreed between the Owner and the County Council).

**2. A426 Newbold Road near Essex Street/Lancaster Road**

- 2.1 Prior to the Occupation of [ ] (or such alternative trigger as may be agreed between the Owner and the County Council) the Owner shall (in its absolute discretion) elect to either:

- (a) Pay the A426 Newbold Road near Essex Street/Lancaster Road Contribution to the Council; or
- (b) Agree the A426 Newbold Road near Essex Street/Lancaster Road Scheme with the County Council and deliver the works set out in the agreed scheme in accordance with the timetable for delivery set out in the approved scheme.

**3. A426 Newbold Road/Wood Street**

- 3.1 Prior to the Occupation of the 50<sup>th</sup> Dwelling (or such alternative trigger as may be agreed between the Owner and the County Council) the Owner shall agree the A426 Newbold Road/Wood Street Scheme with the County Council.

- 3.2 Prior to the Occupation of [ ] the Owner shall (in its absolute discretion) elect to either:

- (a) Pay the A426 Newbold Road/Wood Street Contribution to the County Council; or
- (b) Notify the County Council that the Owner intends to deliver the works set out in the agreed A426 Newbold Road/Wood Street Scheme in accordance with the timetable for delivery set out in the agreed scheme.

**4. Path Improvement Works Contribution**

- 4.1 The Owner covenants to pay the Path Improvement Works Contribution to the County Council prior to [the commencement of any above ground level works]

~~Schedule 3~~Schedule 2 **Council Covenants**

1. The Council covenants with the Owner:
  - 1.1 to comply with each obligation, covenant and undertaking on the part of the Council contained in this Deed;
  - 1.2 not to use or apply the contributions other than for the purposes for which the contributions are paid, as specified in this Deed;
  - 1.3 that if any, all or any part of the contributions (including any interest earned) have not been expended or committed on the day 5 (five) years after the day on which the relevant payment was received or on the date the Deed ends (whichever is the earlier), the Council shall repay the unspent portion to the party that made the relevant Contribution together with any interest at the base lending rate of Lloyds Bank plc accrued from the date of payment to the date of repayment;

~~Schedule 4~~Schedule 3 **County Council Covenants**

1. The County Council covenants with the Owner:
  - 1.1 to comply with each obligation, covenant and undertaking on the part of the County Council contained in this Deed;
  - 1.2 not to use or apply the contributions other than for the purposes for which the contributions are paid, as specified in this Deed;
  - 1.3 that if any, all or any part of the contributions (including any interest earned) have not been expended or committed on the day 5 (five) years after the day on which the relevant payment was received or on the date the Deed ends (whichever is the earlier), the County Council shall repay the unspent portion to the party that made the relevant Contribution together with any interest at the base lending rate of Lloyds Bank plc accrued from the date of payment to the date of repayment;

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**ANNEX B**

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