

DATED

RUGBY BOROUGH COUNCIL

and

WARWICKSHIRE COUNTY COUNCIL

and

ST MODWEN HOMES LIMITED and MILLER HOMES LIMITED

UNILATERAL UNDERTAKING PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990 RELATING TO LAND NORTH OF ROUNDS GARDENS, RUGBY (THE "DEED")

This Deed is dated

2025

Parties and is made by:

- (1) ~~RUGBY BOROUGH COUNCIL~~ of Town Hall, Evreux Way, Rugby CV21 2RR
(Council)
- (2) ~~WARWICKSHIRE COUNTY COUNCIL~~ of Shire Hall, Market Place, Warwick CV34
4RL (County Council); and
- (1) **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 of Two Devon Way,
Longbridge, Birmingham B31 2TS (Owner)

To:

- (1) ~~RUGBY BOROUGH COUNCIL~~ of Town Hall, Evreux Way, Rugby CV21 2RR
(Council)
- (2) ~~WARWICKSHIRE COUNTY COUNCIL~~ of Shire Hall, Market Place, Warwick CV34
4RL (County Council); and

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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) 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) The Owner submitted the Application to the Council on 1-9 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. the Council resolved to refuse to grant the planning permission on 19 March 2025.
- (E) The Owner has submitted the Appeal and this Deed is to be submitted as part of the Appeal.
- (D)

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Agreed terms

1. Interpretation

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

1.1 Definitions:

A426 Newbold Road near Essex Street/Lancaster Road Contribution: the sum of £140,000 (one hundred and forty thousand pounds) Index Linked to be paid by the Owner to the County Council and used by the County Council towards the signalised crossing on A426 near Essex Street/Lancaster Road ~~PROVIDED THAT this contribution shall not be payable if the Owner elects in accordance with paragraph [] of Schedule 2.~~

~~**A426 Newbold Road near Essex Street/Lancaster Road Scheme:** a scheme of works and a timetable for the completion of such works to be agreed between the Owner and the County Council for the signalised crossing pedestrians and cyclists on A426 adjacent to near Essex Street/Lancaster Road.~~

~~**A426 Newbold Road/Wood Street Contribution:** a sum to be agreed between the Owner and the County Council (such agreed sum to be Index Linked) being the equivalent costs of the delivery of the A426 Newbold Road/Wood Street Scheme.~~

~~**A426 Newbold Road/Wood Street Scheme:** a scheme of works and a timetable for the completion of such works to be agreed between the Owner and the County Council for converting the existing footway to a shared pedestrian/cycle route at along or parallel to the A426 Newbold Road between Essex Street and Wood Street.~~

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 APPE3715W253373251) 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.

~~**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.~~

County Council Monitoring Contribution: the sum of £1,500 (based upon £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 by the County Council towards the cost of the County 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.

Dwellings: means the residential units to be constructed on Site pursuant to the Planning Permission and “Dwellings” shall be construed accordingly. Index Linked to be applied in accordance with the Second Schedule.

Expert: means an independent person of at least 10 years' standing in the area of expertise relevant to the dispute which may to be agreed between the parties

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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:

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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: ~~and "Occupied"~~ means 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", "Occupy" and "Occupying"~~ shall be construed accordingly.

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

~~**Rights of Way Contribution:** a sum of £3,065.84 (three thousand and sixty-five pounds and eighty-four pence) Index Linked to support the ongoing maintenance and improvements of public rights of way either fully or partially within a 1.5 mile radius of the site. The rights of way to be considered are RB1 RB9 RB10 RB19 RB21 RB41 RB44 RB48 RB49 RB30 RB35 RB38 R93 R95 R102 R114 R114a R123 R127 R202 R344.~~

~~**Road Safety Contribution:** a sum of £5,750 (five thousand seven hundred and fifty pounds) Index Linked based on £50 per dwelling for the provision of road safety initiatives targeted within the community of the development. Initiatives to include road safety education for primary and secondary schools and training/education for other vulnerable road users within the local area.~~

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.

~~**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].~~

Transport Network Feasibility Study Contribution: the sum of £30,000 (thirty thousand pounds) Index Linked to be paid by the Owner to the County Council and to be used by the County Council towards the costs of a feasibility study for a mitigation package to address the cumulative effects of the allocated Local Plan development in Rugby upon the local transport network, including the Rugby Gyrotory.

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TRO Contribution: a sum of £10,000 (ten thousand pounds) Index Linked to be paid by the Owner to the County Council and to be used by the County Council towards the costs of consultation, amendment and implementation of the Traffic Regulation Orders (TROs) needed to implement the one-way system and associated pedestrian and cycle facilities shown on Drawing Number 05554-CI-F-0002 P08 3200-Rev G02.

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Working Day: a day other than a Saturday or Sunday or public holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's 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 as set out in the decision letter

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:~~

~~(b) The Owner covenants with the County Council to observe and perform the covenants, restrictions and obligations contained in Schedule 12.~~

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~~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 3:~~

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

6.5. Indexation

~~6.15.1~~ All financial contributions payable to ~~the Council and the~~ County Council shall be Index Linked.

~~6.25.2~~ Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as may be agreed between the Owner and the County Council ~~as the Council or County Council shall advise the Owner in writing.~~

7.6. Duration

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

- (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.

8.7. Exemptions and Release

8.17.1 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.

8.27.2 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

8.37.3 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

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9.8. Local land charge

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

10.9. County Council's costs

The Owner shall pay to ~~the Council and~~ the County 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.~~

- (a) The County Council's reasonable and proper legal costs incurred in connection with the preparation, negotiation and completion of this deed.

11.10. Interest on late payment

If any sum or amount has not been paid to ~~the Council and/or~~ the County Council by the date it is due, the Owner shall pay ~~the Council and/or~~ the County 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.

12.11. Miscellaneous

~~12.11.1~~ 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.

~~12.11.2~~ 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.

~~12.11.3~~ 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.

~~12.11.4~~ 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

~~13.12.~~ Dispute Provisions

~~13.12.1~~ 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.

~~13.212.2~~ The Expert will act as an expert and not as an arbitrator.

~~13.312.3~~ 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.

~~13.412.4~~ 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.

~~13.512.5~~ 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.

~~13.612.6~~ 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.

~~14.13.~~ Cancellation of entries

~~14.113.1~~ ~~On the written request of the Owner at~~ 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 Owner may request that the Council (or County Council) will issue~~ a written confirmation of such performance or discharge.

~~14.213.2~~ 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 ~~Owner may request that the~~ Council ~~will~~ cancel all entries made in the local land charges register in respect of this Deed.

15. ~~Disputes~~

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~~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].~~

16.14. No fetter of discretion

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

17.15. Waiver

No failure or delay by the County 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. ~~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.~~

19.16. 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.

20:17. Value added tax

20:17.1 Each amount stated to be payable by the Council, County Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

20:217.2 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.

21:18. Jurisdiction

21:118.1 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

The common seal of WARWICKSHIRE
COUNTY COUNCIL
was affixed to this document in the
presence of:

Designated Officer:

EXECUTED AS A DEED by
ST MODWEN HOMES LIMITED
acting by one director in the presence of a witness:

Director:

Witness sign:

Witness name:

Witness address:

DRAFT

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Schedule 1—Covenants to the Council

1.—Sports Contribution

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

[Viability Provisions TBC]

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Schedule 2Schedule 1 Covenants to the County Council

1. Transport Network Feasibility Study Contribution

1.1 The Owner covenants to pay the Transport Network Feasibility Study 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 The Owner covenants to pay the A426 Newbold Road near Essex Street/Lancaster Road Contribution to the County Council [] (or such alternative trigger as may be agreed between the Owner and the County Council). Prior to the first Occupation of the Development [] (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) 3. 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.~~

~~A426 Newbold Road/Wood Street~~

~~3.~~

~~3.1 Prior to the Occupation of the 50th 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 first Occupation of [] the Development 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.~~

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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]

~~— Rights of Way Contribution:~~

- ~~— The Owner covenants to pay the Rights of Way Contribution prior to [first Occupation of the Development].~~

~~— Road Safety Contribution~~

- ~~4.1 The Owner covenants to pay the Road Safety Contribution prior to [first Occupation of the Development].~~

5. TRO Contribution

- 5.1 The Owner covenants to the TRO Contribution prior to Commencement of Development.

Schedule 3 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—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 in accordance with the provisions of this Deed on the day 5 (five) ~~10 (ten)~~ 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 PROVIDED THAT such written request shall only be made within one (1) year commencing from the date of expiry of the aforementioned period and in the event of no written request being made within such periods any unexpended sum together with accrued interest shall be released free of any liability and obligations to the County Council PROVIDED THAT the County Council shall apply any unexpended sum only to a suitable provision serving the development and in full compliance with Regulation 122 of the CIL Regulations 2010;~~

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