

**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**

This deed is dated

2026

### **Parties**

- (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
- (3) **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**")

### **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 which was validated on 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.
- (E) The Owner has submitted the Appeal and this Deed is to be submitted as part of the Appeal.
- (F) 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 by the County Council.
- (G) The Parties have agreed to enter into this Deed with the intention that the obligations contained in the Deed may be enforced by the Council and/or the County Council against the Owner and their successors in title.
- (H) 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.

## **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 **Commence**, **“Commencing”** and **Commences** shall be construed accordingly.

**Commented [MH1]:** If this is no longer being used as the substantial commencement definition, please re-instate the previous wording

**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 £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 and used 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.

**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:** the All Items Index of Retail Prices (RI) published by the Office for 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.

**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.

**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).

**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 THAT the remainder of this Deed shall continue in full force and effect

### **3. Conditionality**

With the exception of clause clauses 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 (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**

- (a) The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1; and
- (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 the County Council**

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

6.2 The following formula shall be used:

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

Where:

A = the amount to be varied

B = the Index at the date at which the amount is due to be paid;

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.

6.3 All Financial Contributions payable to the Council and the County Council shall be Index Linked.

## **7. Duration**

7.1 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; or
- (c) expires before Commencement.

## **8. 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.

#### **9. Local land charge**

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

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

10.1 The Owner shall pay to the Council and County Council on or before the date of this Deed the Council's and County 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 Contribution and County Council Monitoring Contribution.

#### **11. Interest on late payment**

If any sum or amount has not been paid to the Council or County Council by the date it is due, the Owner shall pay the Council or 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. 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 Council being notified in writing and the Council being satisfied of the performance and full satisfaction of all the terms of this Deed or if this Deed is determined pursuant to **Error! Bookmark not defined.clause-7** the Council will cancel all entries made in the local land charges register in respect of this Deed.

#### **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.

#### **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.

#### **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.

#### **18. Notifications**

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

- (a) Upon Commencement of Development;
- (b) Upon Occupation of the first Dwelling;
- (c) Upon Occupation of 50% of the Dwellings;
- (d) Upon Occupation of 75% of the Dwellings.

**Commented [PM2]:** New trigger added for the Early Stage Review

**Commented [MH3R2]:** To be settled once remainder of the draft is agreed

18.2 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 or by email 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:

- (a) if delivered by hand, the next Working Day after the day of delivery;
- (b) if sent by post, 2 Working Days after the date of posting;
- (c) if sent by recorded delivery, at the time delivery was signed for;
- (d) in respect of notices to the Council, if sent by email, by noon on the day following the date of the email.

18.3 A notice or communication will be served or given:

- (a) on the Owner at the address herein contained or such other address as notified in writing to the Council from time to time, marked for the attention of the Owner;
- (b) 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](mailto:RBC.Planning@rugby.gov.uk) also marked for the attention of the Chief Officer for Growth and Investment; and
- (c) 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.

18.4 The Owner agrees with the Council to give the Council written notice of any change in ownership of any of its interests in the Site within ten (10) Working Days 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.

**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.

**20. Value added tax**

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).

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.

**21. Governing Law**

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.

## Schedule 1 Covenants to the Council

### Viability Assessment

#### 1. Interpretation of Schedule 1

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

<b>“A426 Newbold Road/Oliver Street Contribution”</b>	means [ ] Index Linked to be used by the County Council for [TBC];
<b>“A426 Newbold Road near Essex Street/Lancaster Road”</b>	means [ ] Index Linked to be used by the County Council for [TBC];
<b>“A426 Newbold Road/Wood Street Contribution”</b>	means [ ] Index Linked to be used by the County Council for [TBC];
<b>“Affordable Housing Contribution”</b>	means a contribution which may be made if there is a Surplus and to be used by the Council towards the provision of Affordable Dwellings in its administrative boundary;
<b>“Affordable Dwelling”</b>	means a Dwelling which falls within the definition of Affordable Housing;
<b>“Affordable Housing”</b>	has the meaning given in Annex 2 of the NPPF;
<b>“Affordable Housing Scheme”</b>	means a scheme prepared in accordance with the provisions of this Schedule if an Early Stage Review or Late Stage Review concludes that Affordable

**Commented [PM4]:** WCC to confirm.

**Commented [MH5R4]:** These are not for inclusion in the viability assessment

**Commented [PM6]:** Not agreed - the Council may require on-site AH to be provided if a surplus is identified at the early stage review.

**Commented [MH7R6]:** This is unreasonable as it would require a variation to the planning permission which has the potential to cause further delays to the development coming forward/frustrate the development if the council do not agree.

	<p>Housing is capable of being provided within the Development and which:</p> <ul style="list-style-type: none"> <li>(a) Confirms which previously intended Dwellings are to be converted into Affordable Dwellings;</li> <li>(b) Shows the location, size and internal layout of each Affordable Dwelling with reference to plans and drawings approved as part of the Planning Permission;</li> <li>(c) Provides an indicative timetable for construction and delivery of any Affordable Dwellings;</li> </ul>
<b>"Application Stage Build Costs"</b>	means the estimated cost of [ ] as determined by the Application Stage Viability Review Appraisal;
<b>"Application Stage GDV"</b>	means [£ ] being the estimated gross development value of the Development established by the Application Stage Viability Review Appraisal and which takes into account any Public Subsidy;
<b>"Application Stage Viability Appraisal"</b>	means the Financial Viability Assessment (FVA) relating to the Development dated January 2024 and the addendum report dated June 2024 as prepared by Savills attached to this Deed at Appendix [ ];
<b>"Average Intermediate Value Housing"</b>	means the average value of Intermediate Housing floorspace per square foot based on the information provided to establish the Late Stage Review Actual

**Commented [MH8]:** We would have to replan to account for affordable product so not sure this would be possible at this stage.

**Commented [MH9]:** The application stage viability appraisal has been agreed by the council already.

**Commented [PM10]:** Who will this be provided by?

**Commented [MH11R10]:** I deleted this as the definition does not appear to be used elsewhere,

	<b>GDV;</b>
<b>“Build Costs”</b>	<p>means the build costs comprising construction of the Development and associated infrastructure supported by evidence of these costs including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) details of payments made or agreed to be paid in the relevant building contract;</li> <li>b) receipted invoices;</li> <li>(c) costs certified by the Owner's quantity surveyor, costs consultant or agent;</li> <li>(d) professional, finance, legal and marketing costs; and</li> <li>(e) all internal costs of the Owner including but not limited to project management costs, overheads and administration expenses;</li> </ul>
<b>“Deficit”</b>	means no Surplus has arisen;
<b>“Disposal”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Sale of a Dwelling; or</li> <li>(b) the grant of a lease of a term of less than 125 (one hundred and twenty five) years of a Dwelling; or</li> <li>(c) the grant of an assured shorthold tenancy or a short-term let in respect of a Dwelling of the</li> </ul>

**Commented [MH12]:** This is vague and uncertain

**Commented [SR13R12]:** Agreed

**Commented [CB14R12]:** Lucy: Please note deletion.

Do you have any objections to what is being included as “build costs” i.e legal costs etc.

**Commented [PM15R12]:** This is required to remain as we need to see evidence of the actual costs incurred to be able to accurately assess the Development Viability Information.

**Commented [MH16]:** Previous comment deleted re overlap.

	<p>Development</p> <p>ALWAYS excluding any Fraudulent Transactions 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>	means the sum of: <p>(a) the estimated Build Costs remaining to be incurred; and</p> <p>(b) the Build Costs actually incurred 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 Schedule 1, the date of the submission of the Early Stage Viability Assessment pursuant to paragraph <a href="#">3.1</a> of this Schedule 1;
<b>"Early Stage Review GDV"</b>	means the sum of: <p>(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 detailed comparable evidence; and</p>

**Commented [MH17]:** This is confusing. The definition of Dispose and Sold both refer to the freehold sale of a Dwelling.

	(b) the value of all net receipts from any Sale of a Dwelling within the Development prior to the Early Stage Review Date;
<b>“Early 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;
<b>“Early Stage Viability Assessment”</b>	means a further assessment of the viability of the Development from that undertaken pursuant to the Application Stage Viability Appraisal using Formula 1;
<b>“Education Contribution”</b>	means the sum of £1,740,075 (one million seven hundred and forty thousand and seventy five pounds) Index Linked to be used by the County Council towards [TBC];
<b>“External Consultant”</b>	means the external consultant(s) which may be appointed by the Council to assess the information submitted pursuant to paragraph 3.1.1 and paragraph 6.2 (as applicable);
<b>“Financial Contributions”</b>	means the following: <ol style="list-style-type: none"> <li>the RBC Contributions; and</li> <li>the WCC Contributions</li> </ol> and <b>“Financial Contribution”</b> shall mean any one of the RBC Contributions and/or WCC Contributions;

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Commented [PM18]: WCC to confirm

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<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: <ul style="list-style-type: none"> <li>(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</li> <li>(b) a Disposal that is not an arm's length third party bona fide transaction;</li> </ul>
<b>“Highway Contribution”</b>	means the A426 Newbold Road/Oliver Street Contribution, the A426 Newbold Road near Essex Street/Lancaster Road and the A426 Newbold Road/Wood Street Contribution;
<b>“Late Stage Review Date”</b>	means the date on which seventy five per cent (75%) of the Dwellings have been Occupied;
<b>“Late Stage Review Actual Build Costs”</b>	means the Build Costs incurred at the Late Stage Review Date;

<b>"Late Stage Review Actual GDV"</b>	<p>means the sum of:</p> <p>(a) the value of all <del>netgross</del> receipts from any Sale of a Dwelling prior to the Late Stage Review Date;</p> <p>(b) the Market Value of any Dwelling that has been otherwise Disposed of prior to the Late Stage Review Date but not Sold;</p> <p><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; and</del></p> <p>(d) Commercial Revenue;</p>
<b>"Late Stage Review Estimated GDV"</b>	<p>means the estimated Market Value at the Late Stage Review Date of any Dwelling that has yet to be Disposed of based on comparable evidence;</p>
<b>"Late Stage Review Estimated Build Costs"</b>	<p>means the estimated Build Costs remaining to be incurred at the Late Stage Review Date;</p>
<b>"Late 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 Affordable Housing Contributions and/or any Financial Contributions are payable;</p>
<b>"Late Stage Viability Assessment"</b>	<p>means a further assessment of the viability of the Development in accordance with the Formula 2 at the Late Stage Review Date;</p>

**Commented [PM19]:** How can this be a net payment when the definition is for gross development value. Drafting to remain.

**Commented [MH20R19]:** This needs to be net to provide an accurate representation of the sum actually received. The gross figure will include items such as incentives which should not be counted

**Commented [MH21]:** Cobi - please provide a definition

**Commented [PM22R21]:** This is MH drafting - please confirm what is anticipated to be covered.

**Commented [MH23R21]:** This is the council's drafting, hence asking for Cobi to provide a definition

<b>"Library Contribution"</b>	means the sum of £2,517 (two thousand five hundred and seventeen pounds) Index Linked to be paid to the County Council to improve, enhance and extend the facilities or services of a specified library service point;
<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 <b>Disposed of but not Sold</b> assuming:</p> <ul style="list-style-type: none"> <li>(a) a willing seller and a willing buyer;</li> <li>(b) that, prior to the date of valuation, there has been a reasonable period of not less than <b>sixthree months</b> 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;</li> <li>(c) that no account is taken of any additional bid by a prospective purchaser with a Special Interest; and</li> <li>(d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion;</li> </ul>

**Commented [PM24]:** WCC to confirm

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<b>“NHS Contribution”</b>	means the sum of £250,080 (two hundred and fifty thousand and eighty pounds) Index Linked to facilitate primary care;
<b>“Open Space Contribution”</b>	means the sum of £252,226.00 (two hundred and fifty two thousand two hundred and twenty six pounds) Index Linked which shall comprise of:  Amenity Greenspace maintenance – £9,180 Natural and Semi-natural maintenance – £24,510  Parks and gardens: Provision – £156,160.80 Maintenance – £39,330  Children and Young People: Provision – £6,982.80 Maintenance - £16,063.20
<b>“Path Improvement Works Contribution”</b>	<del>means the sum of £78,400 (seventy eight thousand four hundred pounds) Index Linked to be used by the County Council and used towards lighting, widening, and surfacing improvement to paths between York Street and Dale Street;</del>
<b>“Public Subsidy”</b>	means funding from the Council and any addition 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>“RBC Contributions”</b>	<p>means the</p> <p>a) <b>Sports Contribution</b>; and</p> <p>b) <b>Open Space Contribution</b>;</p>
<b>“Road Safety Contribution”</b>	means the sum of £5,750 (five thousand seven hundred and fifty pounds) Index Linked to support road safety initiatives within the community associated within the Development;
<b>“Sale”</b>	<p>means:</p> <p>(a) the sale of the freehold of a Dwelling; or</p> <p>(b) the grant of a lease of a Dwelling with a term of 125 years or more and subject to nominal rent; and</p> <p>“Sold” shall be construed accordingly</p>
<b>“Special Interest”</b>	<p>means an interest arising where a prospective purchaser would be willing to pay a price in excess of Market Value because of individual, personal, or strategic advantages that are not available to, nor shared by other potential purchasers, including (without limitation):</p> <p>a) ownership or control of adjoining or nearby land, where the acquisition would enable land assembly, unlock development potential, improve access,</p>

**Commented [MH25]:** What about the NHS contribution?

	<p>density, layout or value of other land;</p> <p>b) the ability to secure ransom value, marriage value or other synergistic value unique to that purchaser;</p> <p>c) operational, locational or business requirements specific to that purchaser (including avoidance of relocation, replacement or other abnormal costs); or</p> <p>d) circumstances where the purchaser would derive a particular advantage from the acquisition which would not be reflected in bids from the wider market.</p>
<b>“Sports Contribution”</b>	<p>means the sum of £657,500 (six hundred and fifty seven thousand five hundred pounds) Index Linked comprised of:</p> <p>a) £30,000 towards tennis provision at Caldecott Park or another suitable pitch within the accessibility of the Site;</p> <p>b) £627,500 toward football provision;</p>
<b>“Sports Pavillion Scheme”</b>	<p>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 towards;</p>
<b>“Substantial Commencement”</b>	<p>means construction of the ground floor slab level of the first Dwelling the occurrence of the following in respect of the Development:</p> <p>(a) Completion of all ground preparation works</p>

**Commented [MH26]:** As discussed on the call, our position is that the relevant policy is not engaged and therefore no sports mitigation/ contribution is required. Therefore, we do not agree to the contribution being included in any part of the s106 agreement

**Commented [MH27]:** Sam - please confirm whether this is acceptable

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	<p>for the Development;</p> <p>(b) Completion of the sub-structure including foundations and may basement level of any building; and</p> <p>(e) Completion of the ground floor slab of any building;</p>
<b>“Substantial Commencement Target Date”</b>	means the date 24 months from the date of the grant of Planning Permission but excluding the date of grant of the Planning Permission;
<b>“Surplus”</b>	means the surplus profit (if any) 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);
<b>“WCC Contributions”</b>	<p>means the:</p> <ul style="list-style-type: none"> <li>a) Education Contribution</li> <li>b) Library Contribution</li> <li>c) Path Improvement Works Contribution</li> <li>d) NHS Contribution</li> <li>e) Road Safety Contribution</li> <li>f) Highway Contribution.</li> </ul>

**Commented [PM28]:** WCC to confirm the list of contributions for inclusion.

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## **2. Substantial Commencement**

2.1 The Owner shall notify the Council in writing of Substantial Commencement no later than 10 Working Days after such date and such notice shall be accompanied by full documentary evidence on an open book basis to enable the Council to independently assess whether Substantial Commencement has occurred and, if so, when Substantial Commencement occurred.

2.2 Following the Owner's notification pursuant to paragraph 2.1 of this 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:

- (a) provide the Owner with reasonable written notice of its intention to carry out such an Inspection;
- (b) comply with relevant health and safety legislation; and
- (c) at all times be accompanied by the Owner or its agent.

2.3 The Council shall inspect the Site within 20 Working Days of receiving notice pursuant to paragraph 2.1 above and thereafter provide the Owner with written confirmation as to whether or not the Council considers that the works undertaken amount to Substantial Commencement providing evidence.

2.4 Any dispute between the parties concerning whether or not Substantial Commencement has occurred may be referred to dispute resolution in accordance with Clause 13.

2.5 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 Schedule 1.

2.52.6 In the event Substantial Commencement occurs before the Substantial Commencement Target Date, the obligations in paragraph 3 of this Schedule 1 does not apply.

## **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 2.3 of this Schedule 1 or pursuant to dispute resolution in accordance with Clause 13) the Owner shall:

- (a) submit 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 2.3 of this Schedule 1 or pursuant to dispute resolution in accordance with Clause 13 that Substantial Commencement has not been achieved;

(b) ~~not undertake any further works which would constitute Substantial Commencement until the Early Stage Review has been undertaken and agreed between the Owner and the Council in accordance with the relevant provisions of this Schedule or determined by the Expert in accordance with Clause 13;~~

3.2 The Owner undertakes in relation to the preparation of the Early Stage Viability Assessment and the Late Stage Viability Assessment :

- (a) the Early Stage Viability Assessment and Late Stage Viability Assessment will be produced on an open book basis under which there shall be full and frank disclosure of all relevant information;
- (b) all costs included in the Early Stage Viability Assessment and Late Stage Viability Assessment shall be reasonably and properly attributable to the Development and associated infrastructure; and
- (c) there will be no double counting of costs or revenue.

#### 4. Late Stage Viability Assessment

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

4.2 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.

4.3 Not more than 75% of the Dwellings shall be Occupied unless and until the Late Stage Review has been undertaken and ~~agreed between the Owner and the Council or determined by the Expert in accordance with the relevant provisions of this Schedule 1 and Clause 13~~ submitted to the Council.

#### 5. Assessment of development viability supporting evidence and other information

5.1 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraphs 4.1(a), 5.2 and 6.2 of this Schedule 1 ~~and shall be entitled to recover from the Owner:~~

(a) ~~Its reasonable and properly incurred internal costs (including officer time); and~~

**Commented [MH29]:** It is unreasonable to expect development to stop whilst the viability assessment is agreed

**Commented [MH30]:** We cannot delay occupations for the agreement

**Commented [MH31]:** These fees should be met by the council

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(b) Its reasonable and properly incurred external surveying and legal costs

5.1 incurred in reviewing and assessing the information submitted pursuant to paragraphs 4.1(a), 5.2 and 6.2 of this Schedule 1 and the Owner shall pay such costs within 20 Working Days of receipt of such request for payment.

5.2 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 4.1(a) and 5.2 of this Schedule 1 above, the Owner shall within 2010 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

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5.3 Following the submission of the information pursuant to paragraphs 3.1 and 5.2 of this Schedule 1 and any further information requested pursuant to paragraph 6.2 of this Schedule the Owner and the Council, both acting reasonably and in good faith, may review and seek to reach an agreed position on the matters set out in the submission and, where agreed between the parties, this may result in revisions to the submission.

Commented [MH32]: This cannot be open ended. Please reinstate previous drafting and provide a time frame

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5.4 In agreeing the Early Stage Viability Assessment and Late Stage Viability Assessment the Parties shall act reasonably and the Owner shall owe the Council shall owe a duty of good faith in connection with the provisions of this Schedule 1.

Commented [MH33]: If this is to be included, it must be reciprocal

5.5 When the Council has finalised its review of the information submitted pursuant to paragraphs 4.1(a), 5.2 and 6.2, the Council shall, within 340 Working Days of the final information being received pursuant to the requests under paragraph 6.3, confirm to the Owner in writing that:

- (a) it rejects (with reasons) the conclusions of the submission ("Non-Acceptance Notice"); or
- (b) it accepts the conclusions of the submission and confirms that there is no Surplus; or
- (c) it accepts the conclusions of the submission ("Acceptance Notice") that a sufficient Surplus exists and confirms (following consultation with the County Council) that either Affordable Housing shall be provided (as a result of the Early Stage Viability Assessment only and with the agreement of the Owner) and/or and/or the Sports Pavilion shall be provided and/or an

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Affordable Housing Contribution shall be paid and/or the Financial Contribution shall be paid pursuant to paragraph [xx] below.

**Commented [MH34]:** We won't make the relevant financial contributions. We will pay a proportion of the Surplus and this will be for the county and council to allocate between them

- 5.6 In the event that pursuant to paragraph 5.5 the Owner and the Council have not agreed the submission either of them shall be entitled to refer the matter to the Expert for determination and shall use reasonable endeavours to do so within 20 Working Days of the date of the Non-Acceptance Notice (unless otherwise agreed by the Council and the Owner) and the date the matter is referred shall hereafter be referred to as the **“Referral Date”**.
- 5.7 Unless otherwise agreed between the Owner and the Council or required by the Expert, each shall within a further period of 10 Working Days from the Referral Date submit its evidence and representations to the Expert in respect of the submission.
- 5.8 In addition to the matters specified in paragraph 5.7 above, in making his determination the Expert shall have regard to:-
  - (a) all relevant material submitted to him by the Council and the Owner;
  - (b) such relevant financial, legal, planning or other matters he considers relevant using reasonable care and skill and his professional expertise;
  - (c) the provisions of this Deed and this Schedule.

## **6. DELIVERY OF ANY ADDITIONAL AFFORDABLE HOUSING, PAYMENT OF AFFORDABLE HOUSING CONTRIBUTION AND FINANCIAL CONTRIBUTIONS**

- 6.1 In relation to the Early Stage Viability Appraisal only, where the Acceptance Notice confirms that there is a Surplus and the Parties agree that Affordable Housing and/or the Sports Pavillion is required to may be provided on site, the Owner shall prior to Occupation of more than 75% (seventy five per cent) of the Dwellings (or such later date as may be agreed with the Council in relation to a Late Stage Review):-
  - (a) make any amendments to the Development required to accommodate such Affordable Housing and/or the Sports Pavillion and seek any necessary variations to the Planning Permission and/or details approved pursuant to any conditions imposed thereon; and
  - (b) provide (as applicable) an Affordable Housing Scheme and/or a Sports Pavillion Scheme to the Council for their approval and thereafter provide the Affordable Housing and/or Sports Pavillion in accordance with the approved scheme and make it available for Occupation.

6.2 The Developer shall not Occupy more than 90% (ninety per cent) of the Dwellings (or such later date as may be agreed with the LPA pursuant to paragraph 6.1 above) unless and until the requirements of paragraph 6.1 above have been satisfied and full and satisfactory evidence of the same has been provided to the LPA.

6.3 Where the Acceptance Notice confirms that there is a Surplus and an Affordable Housing Contribution and/or Financial Contribution is required to be paid:

(a) the Owner shall pay the Affordable Housing Contribution and/or Financial Contribution [50%] of the Surplus to the Council prior to the Occupation of 90% of the Dwellings within 10 Working Days of such agreement or determination; and

(b) the Owner shall not Occupy more than 75% (seventy five per cent) of the Dwellings until the Affordable Housing Contribution and/or Financial Contribution has been paid in full to the Council.

## 7. Memorandum

7.1 Within 15 Working Days of the Acceptance Notice (or the Expert determining an Affordable Housing Scheme), the Owner and the Council shall record the Affordable Housing Scheme by completing a Memorandum by each of the Council and the Owner signing the same (acting by authorised signatories).

7.2 The Council and the Owner agree that upon completion of a Memorandum, to endorse each engrossed copy of this Deed with the insertion of the following:

*"The Parties have agreed the details of the Affordable Housing Scheme by way of a signed Memorandum between the Council and the Owner dated 20".*

7.3 Upon completion of a Memorandum, this Deed shall be construed such that the Affordable Housing shall be provided in accordance with the approved Affordable Housing Scheme.

**Commented [MH35]:** In relation to the Early Stage VA, if onsite AH is required, we assume that no other sums will be sought? If this is not the case, we will need to ensure the overall costs of the onsite provision (including planning costs etc) are factored in

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**Commented [MH36]:** Where there is a Surplus, 50% of the Surplus will be payable to the Council and the Council can thereafter apply it to the relevant contributions as it sees fit.

**Commented [MH37R36]:** Council to put forward a percentage if 50% is not agreed

## 8. FORMULA 1

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

Where:

**Formula**

**Commented [CB38]:** Lucy: As above, is the Council willing to pay its own costs and that of the consultant?

**Commented [CB39]:** Formulas to be used may be subject to revision

A= Early Stage Review GDV (£)

B = Application Stage GDV (£) )

C= Early Stage Review Build Costs (£)

D= Application Stage Build Costs (£)

P= (A-B)\*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 (%)

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 [MH40]:** It would be prudent to include the fixed percentage - is this 20%?

**Commented [CB41R40]:** Lucy: Please advise?

**Commented [PM42R40]:** The Target Return ought to be set out in the DV's Report on the viability assessment.

**Commented [MH43]:** As above

## Schedule 2—Biodiversity Net Gain

### DEFINITIONS

In this Schedule 2, 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>Formatted:</b> Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 0 cm + Indent at: 0.63 cm
<b>"Biodiversity Loss"</b>	means a negative Biodiversity Unit score for the Development as a whole	<b>Formatted:</b> Schedule Untitled subclause 1, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 0 cm + Indent at: 0.63 cm
<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>Formatted:</b> Schedule Untitled subclause 1, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 0 cm + Indent at: 0.63 cm
<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>Formatted:</b> Schedule Untitled subclause 1, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 0 cm + Indent at: 0.63 cm
<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>Formatted:</b> Schedule Untitled subclause 1, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 0 cm + Indent at: 0.63 cm
<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>Formatted:</b> Schedule Untitled subclause 1, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 0 cm + Indent at: 0.63 cm

<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 WCC 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>"WCC Financial Contribution Calculator"</b>	means the document titled [ ] and dated [ ] the 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

## 1. Biodiversity Offsetting

The Owner covenants that:

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;

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;

**Schedule 3** 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 2 HIGHWAYS CONTRIBUTIONS**

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<b><u>Path Improvement Works Contribution</u></b>	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
<b><u>Transport Network Feasibility Study Contribution</u></b>	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 Gyratory
<b><u>TRO Contribution</u></b>	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-C1-F-0002 P08

### **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. Path Improvement Works Contribution**

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

**3. TRO Contribution**

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

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**Schedule 4Schedule 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 Affordable Housing Contribution or the Financial Contributions other than for the purposes for which the contributions are paid, as specified in this Deed; and
  - 1.3 that if any, all or any part of the Affordable Housing Contribution or the Financial 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 sum 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 5****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 WCC Contributions and/or the Highways Contributions (as set out in Schedule 2) 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 WCC Contribution or Highways Contributions as relevant together with any interest at the base lending rate of Lloyds Bank plc accrued from the date of payment to the date of repayment;

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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**ANNEX A** Plan

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**ANNEX B**

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