

**DATED**

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**RUGBY BOROUGH COUNCIL**

and

**WARWICKSHIRE COUNTY COUNCIL**

and

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

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

This deed is dated

2026

**And is made by:**

- (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 (**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**)

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 Education Authority, Library Authority and 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.

**Agreed terms**

**1. Interpretation**

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

**1.1 Definitions:**

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

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

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

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

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

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

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

**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 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:** means:

- a) In respect of the Transport Network Feasibility Study Contribution and the TRO Contribution 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 or County Council as applicable
- b) in respect of the Path Improvement Works Contribution and Offsetting Contribution, the Baxter Index which is the Department of Transport Local Government and the Regions Monthly Bulletin of indices-Civil Engineering Formula 1990 Series to be weighed in the proportions Labour and Supervision 25% Aggregate 30% and Coated Macadam and Bitumen Products 20;

**Index Linked:** means subject to the indexation provisions in Clause 5.

**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:** 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” 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.

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- 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 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, (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 Schedules 1, 2 and 3.

### **5. Indexation**

5.1 The Path Improvement Works Contribution, TRO Contribution and the Transport Network Feasibility Study Contribution payable to the County Council shall be Index Linked in accordance with the formula set out in clause 5.2.

5.2 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. Duration**

6.1 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.

## **7. Release**

7.1 References in this Deed to the Council and the County Council include the successors to its statutory functions.

7.2 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.

7.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

**8. Local land charge**

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

**9. Council's and County Council's legal costs and monitoring fees**

- 9.1 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
- 9.2 The Owner shall pay to the Council prior to the Commencement of Development the Council Monitoring Contribution
- 9.3 The Owner shall pay to the County Council prior to the Commencement of Development the County Council Monitoring Contribution.

**10. Interest on late payment**

If any sum or amount has not been paid to the Council or County Council (as relevant) by the date it is due, the Owner shall pay the Council or County Council (as relevant) 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.

**11. Miscellaneous**

- 11.1 In the event that the Council may 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 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.
- 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.
- 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.



- 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.

## **12. Dispute Provisions**

- 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.
- 12.2 The Expert will act as an expert and not as an arbitrator.
- 12.3 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.
- 12.4 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.
- 12.5 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.
- 12.6 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.

## **13. Cancellation of entries**

- 13.1 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 may issue a written confirmation of such performance or discharge.
- 13.2 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.**7 the Council may cancel all entries made in the local land charges register in respect of this Deed.

**14. No fetter of discretion**

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

**15. Agreements and Declarations**

15.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

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

**16. Notifications**

16.1 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.

16.2 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.

16.3 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 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 Service Manager - Developer Negotiations and Contributions.

16.4 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.

#### **17. 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.

#### **18. Value added tax**

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

18.2 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.

#### **19. Governing Law**

19.1 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.

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## **Schedule 1 Covenants to the Council and the County 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>"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>	<p>means a scheme prepared in accordance with the provisions of this Schedule if an Early Stage Review concludes that Affordable 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 or to be approved as part of the Planning Permission;</li><li>(c) Provides an indicative timetable for construction and delivery of any</li></ul>

	Affordable Dwellings;
"Application Stage Build Costs"	means the estimated cost of £29,280,259 (twenty nine million two hundred and eighty thousand two hundred and fifty nine pounds) as determined by the Application Stage Viability Appraisal;
"Application Stage GDV"	means £32,040,000 (thirty two million forty thousand pounds) being the estimated gross development value of the Development established by the Application Stage Viability Appraisal;
"Application Stage Viability Appraisal"	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 [ ];
"Build Costs"	means the build costs comprising construction of the Development and associated infrastructure supported by evidence of these costs including but not limited to: <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>

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<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 Development</li> </ul> <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>	<p>means the sum of:</p> <ul style="list-style-type: none"> <li>(a) the estimated Build Costs remaining to be incurred; and</li> <li>(b) the Build Costs actually incurred at the Early Stage Review Date;</li> </ul>
<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 3.1 of this Schedule 1;

<b>"Early Stage Review GDV"</b>	<p>means the sum of:</p> <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> <p>(b) the value of all net receipts from any Sale of a Dwelling within the Development prior to the Early Stage Review Date;</p>
<b>"Early Stage Review Statement"</b>	<p>means a written statement that contains the relevant supporting information and a calculation of whether in the Owner's view a Surplus has arisen;</p>
<b>"Early Stage Viability Assessment"</b>	<p>means a further assessment of the viability of the Development from that undertaken pursuant to the Application Stage Viability Appraisal using Formula 1;</p>
<b>"Early Years Contribution"</b>	<p>means the sum of £182,296 (one hundred and eighty-two thousand two hundred ninety six pounds) calculated by using the formula set out below and Index Linked towards additional Early Years provision within the vicinity of the Site:</p> <p>Formula: the Early Years Contribution = <math>(N / 100 \times 4.86 \times 1.4) \times £22,787</math></p> <p>Where:</p> <p>N = Number of relevant dwellings</p> <p>4.86 = crude birth rate rounded to 2 decimal places</p> <p>1.4 – number of full-time years</p>



	£22,787 = cost per place for expansion of existing provision based upon latest Department for Education figures
<b>“Education Contribution”</b>	means the Early Years Contribution, Primary Education Contribution, Secondary Education Contribution, Primary SEND Education Contribution and Secondary/Post 16 SEND Contribution together (Index Linked)
<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: <ul style="list-style-type: none"> <li>a) the RBC Contributions; and</li> <li>b) the WCC Contributions</li> </ul> and <b>“Financial Contribution”</b> shall mean any one of the RBC Contributions and/or WCC Contributions;
<b>“Formula 1”</b>	means the formula identified as “Formula 1” within this Schedule;
<b>“Formula 2”</b>	means the formula identified as “Formula 2” within this Schedule;
<b>“Formulas”</b>	means either Formula 1 or Formula 2 as the case may be;

<b>"Fraudulent Transaction"</b>	means:  (a) a transaction the purpose or effect of which is to artificially reduce the Late Stage Review Actual GDV and/or the Late Stage Review Actual Build Costs; or (b) a Disposal that is not an arm's length third party bona fide transaction;
<b>"Late Stage Review Date"</b>	means the date on which seventy five per cent (75%) of the Dwellings have been Sold;
<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>	means the sum of:  (a) the value of all net receipts from any Sale of a Dwelling prior to the Late Stage Review Date;  (b) the Market Value of any Dwelling that has been otherwise Disposed of prior to the Late Stage Review Date but not Sold;  (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;
<b>"Late Stage Review Estimated GDV"</b>	means the estimated Market Value at the Late Stage Review Date of any Dwelling that has yet to be Disposed of based on comparable evidence;
<b>"Late Stage Review Estimated Build Costs"</b>	means the estimated Build Costs remaining to be incurred at the Late Stage Review Date;

<b>"Late Stage Review Statement"</b>	means a written statement that contains the relevant supporting information and a calculation of whether in the Owner's view a Surplus has arisen;
<b>"Late Stage Viability Assessment"</b>	means a further assessment of the viability of the Development in accordance with the Formula 2 at the Late Stage Review Date;
<b>"Libraries 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 Disposed of but not Sold assuming:</p> <p>(a) a willing seller and a willing buyer;</p> <p>(b) that, prior to the date of valuation, there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) of the price and terms and the completion of the sale;</p> <p>(c) that no account is taken of any additional bid by a prospective purchaser with a Special Interest; and</p>

	(d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion;
<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>	<p>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:</p> <p>Amenity Greenspace maintenance – £9,180 Natural and Semi-natural maintenance – £24,510</p> <p>Parks and gardens: Provision – £156,160.80 Maintenance – £39,330</p> <p>Children and Young People: Provision – £6,982.80 Maintenance - £16,063.20</p>
<b>“Primary Education Contribution”</b>	<p>means the sum of £865,906 (eight hundred sixty-five thousand, nine hundred and six pounds) calculated by using the formula set out below and Index Linked towards additional Primary Education provision within the vicinity of the Site:</p> <p>Formula: the Primary Education Contribution = <math>(N / 100 \times 4.86 \times 7) \times £22,787</math></p> <p>Where:</p> <p>N = Number of relevant dwellings</p> <p>4.86 = crude birth rate rounded to 2 decimal places</p> <p>7 – number of full-time years</p>

	£22,787 = cost per place for expansion of existing provision based upon latest DfE figures
<b>“Primary SEND Contribution”</b>	<p>means the sum of £41,700 (forty one thousand, seven hundred pounds) calculated by using the formula set out below and Index Linked towards additional Primary SEND provision within the vicinity of the Site:</p> <p>Formula: the Primary SEND Contribution = <math>(N / 100 \times 0.05 \times 7) \times £90,653</math></p> <p>Where:</p> <p>N = Number of relevant dwellings</p> <p>0.05 = crude birth rate rounded to 2 decimal places</p> <p>7 – number of full-time years</p> <p>£90,653 = cost per place for expansion of existing provision based upon latest DfE figures</p>
<b>“Public Subsidy”</b>	means funding from the Council and any additional public subsidy secured by or on behalf of the Owner to support the delivery of the Development;
<b>“Relevant Review”</b>	means either the Early Stage Review or the Late Stage Review as the case may be and the term <b>“Relevant Reviews”</b> shall be construed accordingly”;
<b>“Review Date”</b>	means either the Early Stage Review Date or the Late Stage Review Date as the case may be;

<b>“RBC Contributions”</b>	means the Open Space Contribution and the NHS Contribution
<b>“Rights of Way Contribution”</b>	means the 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
<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>	means: (a) the sale of the freehold of a Dwelling; or (b) the grant of a lease of a Dwelling with a term of 125 years or more and subject to nominal rent; and "Sold" shall be construed accordingly
<b>“Secondary Education Contribution”</b>	means the sum of £608,472 (six hundred and eight thousand, four hundred and seventy-two pounds) calculated by using the formula set out below and Index Linked towards additional Secondary Education provision within the vicinity of the Site:  Formula: the Secondary Education Contribution = (N / 100 x 4.86 x 5) x £22,536

	<p>Where:</p> <p>N = Number of relevant dwellings</p> <p>4.86 = crude birth rate rounded to 2 decimal places</p> <p>5 – number of full-time years</p> <p>£22,536 = cost per place for expansion of existing provision based upon latest Department for Education figures</p>
<b>“Secondary / Post 16 SEND Contribution”</b>	<p>means the sum of £41,700 (forty one thousand, seven hundred pounds) calculated by using the formula set out below and Index Linked towards additional Secondary and Post 16 provision in the vicinity of the Site:</p> <p>Formula: the Secondary / Post 16 SEND Contribution = <math>(N / 100 \times 0.05 \times 7) \times £90,653</math></p> <p>Where:</p> <p>N = Number of relevant dwellings</p> <p>0.05 = crude birth rate rounded to 2 decimal places</p> <p>7 – number of full-time years</p> <p>£90,653 = cost per place for expansion of existing provision based upon latest Department for Education figures</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, 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>“Substantial Commencement”</b>	means the construction of the ground floor slab level of the first Dwelling;
<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) Libraries Contribution</li> <li>c) Rights of Way Contribution; and</li> <li>d) Road Safety Contribution</li> </ul>



## **2. Substantial Commencement**

- 2.1 The Owner shall notify the Council in writing of Substantial Commencement no later than 10 Working Days after Substantial Commencement has occurred and such notice shall be accompanied by full documentary evidence on an open book basis of Substantial Commencement.
- 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 the works which have been undertaken (the "**Inspection**") PROVIDED ALWAYS THAT any Inspection shall:
- (a) only take place if reasonable notice is given to the Owner;
  - (b) comply with relevant health and safety legislation; and
  - (c) at all times be accompanied by the Owner or its agent.
- 2.3 The Owner shall allow a period of 20 Working Days from service of the notice pursuant to paragraph 2.1 above for the Council to inspect the Site and thereafter if the Council decides to undertake an Inspection the Owner shall allow a period of 20 Working Days from the date of the Inspection for the Council to 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 In the event that no Inspection is carried out within the timescales set out in paragraph 2.3 above or an Inspection is carried out within the timescales but no written confirmation is received by the Owner from the Council in accordance with the timescales set out in paragraph 2.3 above it shall be deemed that Substantial Commencement has occurred.
- 2.5 In the event that the Council and the Owner cannot reach an agreement as to whether Substantial Commencement has occurred any dispute between the parties concerning

whether or not Substantial Commencement has occurred may be referred to dispute resolution in accordance with Clause 12.

2.6 Where Substantial Commencement has not occurred on or before the Substantial Commencement Target Date the Owner will carry out and submit an Early Stage Viability Assessment in accordance with the provisions of this Schedule 1.

2.7 In the event Substantial Commencement occurs on or before the Substantial Commencement Target Date, the relevant obligations in paragraph 3 of this Schedule 1 do not apply and the Owner shall not carry out the Early Stage Viability Assessment.

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

3.1 Where Substantial Commencement has not occurred on or before the Substantial Commencement Target Date (as determined under paragraph 2 of this Schedule 1 or pursuant to dispute resolution in accordance with Clause 12) the Owner shall submit an Early Stage Viability Assessment to the Council together with the Early Stage Review

Statement no later than 30 Working Days after the expiry of the Substantial Commencement Target Date;

3.2 In the event that the Council and the Owner cannot reach an agreement as to the outcome of the Early Stage Viability Assessment any dispute between the parties may be referred to dispute resolution in accordance with Clause 12.

3.3 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 The Owner covenants that it shall submit the Late Stage Viability Assessment and the Late Stage Review Statement to the Council within 20 Working Days of 75% of the Dwellings being Sold.

4.3 The Owner may Occupy up to a maximum of 80% of the total number of Dwellings provided that the Late Stage Viability Assessment and the Late Stage Review Statement have been submitted.

4.4 In the event that the Council and the Owner cannot reach an agreement as to the outcome of the Late Stage Viability Assessment any dispute between the parties may be referred to dispute resolution in accordance with Clause 12.

#### **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 3.1, 4.2 and 5.2 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
- (b) Its reasonable and properly incurred external surveying and legal costs

incurred in reviewing and assessing the information submitted pursuant to paragraphs 3.1, 4.2 and 5.2 of this Schedule 1 and the Owner shall pay such costs within 30 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 3.1 and 4.2 of this Schedule 1 above, the Owner shall within 10 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 PROVIDED THAT no further requests for information may be made after 2 months from the date of the Early Stage Viability Assessment or the Late Stage Viability Assessment (as relevant)
- 5.3 Following the submission of the information pursuant to paragraphs 3.1 and 4.2 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.
- 5.4 If the matter is referred to an Expert in accordance with paragraphs 3.2 and 4.4 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 Assessment only, where the outcome of the Early Stage Viability Assessment confirms that there is a Surplus the Owner may elect to provide

Affordable Housing onsite and 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):-

- (a) make any amendments to the Development required to accommodate such Affordable Housing 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 to the Council for their approval and thereafter provide the Affordable Housing in accordance with the approved scheme

6.2 If paragraph 6.1 applies, the Owner shall not Occupy more than 80% (eighty per cent) of the Dwellings (or such later date as may be agreed with the Council pursuant to paragraph 6.1 above) unless and until the requirements of paragraph 6.1 above have been satisfied and evidence of the same has been provided to the LPA.

6.3 Where either the Early Stage Viability Assessment or the Late Stage Viability Assessment confirms that there is a Surplus (and, in relation to the Early Stage Viability Assessment only, the Owner has not elected to provide Affordable Housing onsite):

6-36.4 the Owner shall pay 70% (seventy percent) of the Surplus to the Council to be applied towards the Affordable Housing Contribution and/or Financial Contributions (as applicable and as may be agreed between the Council and the County Council); and

6-46.5 the Owner shall not Occupy the final Dwelling on the Development until the relevant proportion of the Surplus has been paid in full to the Council.

## **7. Memorandum**

7.1 In the event that the Owner elects to provide onsite Affordable Housing pursuant to paragraph 6.1 of this Schedule, the Owner shall request the agreement of the Council to 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 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.

## Formula

### 8. FORMULA 1

$$\text{"Surplus profit"} = ((A - B) - (C - D)) - P$$

Where:

A= Early Stage Review GDV (£)

B = Application Stage GDV (£ )

C= Early Stage Review Build Costs (£)

D= Application Stage Build Costs (£)

P= (A-B)\*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 of 20% 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 at 20% in the Application Stage Viability Appraisal.

## **Schedule 2 – County Council Contributions**

### **DEFINITIONS**

In this Schedule 2, the following words and phrases shall have the meanings ascribed to them:

<b>“Path Improvement Works Contribution”</b>	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;
<b>“Transport Network Feasibility Study Contribution”</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>“TRO Contribution”</b>	means the sum of £10,000 (ten thousand pounds) Index Linked towards the costs of consultation, amendment and, if appropriate, implementation of the Traffic Regulation Orders (TROs) needed to implement the one-way system and associated pedestrian and cycle facilities shown on Drawing Number 3200 Rev C02

#### **Transport Network Feasibility Study Contribution**

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)

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



2. The Owner covenants to pay the Path Improvement Works Contribution to the County Council prior to the commencement of any above ground works (or such alternative trigger as may be agreed between the Owner and the County Council)

**TRO Contribution**

3. The Owner covenants to pay the TRO Contribution prior to Commencement of Development (or such alternative trigger as may be agreed between the Owner and the County Council)

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### Schedule 3 Biodiversity Net Gain

#### DEFINITIONS

In this Schedule 3, the following words and phrases shall have the meanings ascribed to them:

"Offsetting Contribution"	means the payment of a sum of money to the County Council 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 vicinity of the Development which will deliver biodiversity gain. The total sum of the Offsetting Contribution paid in relation to the Development shall not exceed £310,990 (three hundred and ten thousand nine hundred and ninety pounds)
"WCC Financial Contribution Calculator"	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:

In the event that the information relating to the biodiversity net gain submitted pursuant to the conditions on the Planning Permission show that a biodiversity net gain cannot be achieved through on-site provision and the Owner has been unable to secure offsite mitigation (which may include purchasing credits from an offsite biodiversity gain site) prior to Occupation, the Owner shall pay the Offsetting Contribution to 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).

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**Executed** as a Deed by  
**ST MODWEN HOMES LIMITED**

acting by a Director ..... Director

In the presence of:

Signed by witness: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

**Executed** as a Deed by  
**MILLER HOMES LIMITED**

acting by a Director ..... Director

In the presence of:

Signed by witness: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

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**ANNEX B**

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