

DATED _____ **2026**

- (1) RUGBY BOROUGH COUNCIL**
- (2) WARWICKSHIRE COUNTY COUNCIL**
- (3) IAN JAMES ALLAN**
- (3) RICHBOROUGH ESTATES LIMITED**

**PLANNING OBLIGATION BY DEED OF
AGREEMENT**

relating to Land South East of Rugby Road, Clifton Upon
Dunsmore, Appeal Reference 6003106



Pinsent Masons

CONTENTS

	Page
1. DEFINITIONS	2
2. INTERPRETATION	4
3. LEGAL BASIS	5
4. CONDITIONAL ENTRY INTO FORCE	6
5. DURATION	6
6. THE OWNER' COVENANTS	6
7. THE COUNCIL'S COVENANTS	6
8. THE COUNTY COUNCIL'S COVENANTS	6
9. SUCCESSORS IN TITLE AND RELEASE	6
10. MISCELLANEOUS	7
11. WAIVER	8
12. CHANGE IN OWNERSHIP	8
13. INDEXATION	8
14. INTEREST	8
15. VAT	8
16. DISPUTE PROVISIONS	8
17. LEGAL COSTS	9
18. NOTICES	9
19. JURISDICTION	10
20. DELIVERY	10
SCHEDULE 1 MONITORING CONTRIBUTIONS	11
SCHEDULE 2 CONTRIBUTIONS	12
SCHEDULE 3 AFFORDABLE HOUSING	19
SCHEDULE 4 OPEN SPACE	32
SCHEDULE 5 SPORTS PROVISION	38
SCHEDULE 6 COUNCIL AND COUNTY COUNCIL COVENANTS	47
APPENDIX 1 PLAN	
APPENDIX 2 OPEN SPACE PLAN	

THIS AGREEMENT is made on

2026

BETWEEN:-

- (1) **RUGBY BOROUGH COUNCIL** of Town Hall, Evreux Way, Rugby CV21 2RR (the "**Council**");
 - (2) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall, Market Place, Warwick CV34 4RL (the "**County Council**");
 - (3) **IAN JAMES ALLAN** of South Road, Clifton Upon Dunsmore, Rugby CV23 0BY (the "**Owner**"); and
 - (4) **RICHBOROUGH ESTATES LIMITED** (Company Number 04773757) whose registered office is at Waterloo House, Waterloo Street, Birmingham, B2 5TB (the "**Developer**"),
- (together the "**Parties**").

WHEREAS:

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) The County Council is a local planning authority and the highway authority and the education authority for the area in which the Site is situated.
- (C) The Owner is the freehold owner of the Site registered with the Land Registry under title number WK470892, WK470895 and WK470893.
- (D) The Developer submitted the Application to the Council which was validated on 22 August 2025 and has appealed to the Secretary of State against non-determination of the Application and this Deed is submitted as part of the Appeal.
- (E) The Owner submitted the Application to the Council which was validated on 22 August 2025 and has appealed to the Secretary of State against non-determination of the Application and this Deed is submitted as part of the Appeal.
- (F) 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, the Developer and their successors in title.
- (G) For the purposes of Regulation 122 of the CIL Regulations 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.

IT IS AGREED as follows:

1. **DEFINITIONS**

1.1 In this Deed:

"1990 Act" means The Town and Country Planning Act 1990

"Appeal" means the appeal against non-determination of the Application with reference 6003106 lodged on 15 January 2026

"Application"	means the application for outline planning permission for the Development validated by the Council on 22 August 2025 and allocated reference number R25/0565
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 or their statutory successor
"Commencement of Development"	<p>means to begin the Development by carrying out a material operation as defined in section 56(4) of the 1990 Act other than (for the purposes of this Deed and for no other purpose) operations consisting of:</p> <ul style="list-style-type: none"> a) site clearance; b) archaeological investigations; c) investigations for the purpose of assessing ground conditions; d) remedial work in respect of any contamination or other adverse ground conditions; e) erection of any temporary means of enclosure; and f) the temporary display of site notices or advertisements <p>and the "terms "Commencement" and "Commenced" and "Commence Development" and "Commencement Date" are to be construed accordingly</p>
"Contributions"	means any financial contributions due to be paid to the Council or the County Council pursuant to this Deed
"Deed"	means this Deed made under section 106 of the 1990 Act and all other enabling powers
"Dwelling"	means the residential unit to be constructed at the Site pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
"Development"	means the outline application with some matters reserved for the demolition of all buildings and the residential development of up to 160 dwellings, and creation of associated vehicular access off Rugby Road, pedestrian/cycle access points, parking, landscaping, drainage features, open space, children's play area and associated infrastructure (all matters reserved except for vehicular access off Rugby Road) as set out in the Application
"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 the All Items Index of Retail Prices published by the Office of National Statistics (or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation notified in writing to the Owner by the Council or the County Council (as applicable) or in respect of the Education Contributions the All In Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change

the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such index shall be determined by the Arbitrator appointed by the President of the RICS of the purposes of this Deed in all cases to ensure as nearly as possible that the sum of money involved shall fluctuate in accordance with the general level of the building industry costs.

"Indexed"		means subject to the indexation provisions in Clause 13
"Inspector"		means the planning inspector appointed by the Planning Inspectorate/Secretary of State in determination of the Appeal
"Interest"		means interest at 4% above the base lending rate of Lloyds Bank plc from time to time
"Occupation"		and "Occupy" "Occupied" and "Occupier" means beneficial occupation of any part of the Development for the purposes permitted by the Planning Permission other than occupation for the purposes of construction fitting-out decoration marketing display or security operations
"Parish Council"		means Clifton Upon Dunsmore Parish Council being the parish council where the Development is located
"Plan"		means the plan attached to this Deed at Appendix 1 entitled Site Location Plan with reference P10-001 Rev E
"Planning Permission"		means the outline planning permission subject to conditions that may be granted pursuant to the Appeal
"Reserved Matters Application"	Matters	means an application to the Council for approval of reserved matters (except access) for the Development
"Reserved Approval"	Matters	means approval of a Reserved Matters Application
"Reserved Area"	Matters	means any part of the Development for which a Reserved Matters Approval is obtained
"Secretary of State"		means 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
"Working Day"		means a day other than a Saturday or Sunday or public holiday in England and any other day the Council or County Council offices are not open.

2. INTERPRETATION

2.1 In this Deed, unless otherwise indicated, reference to any:

- 2.1.1 recital, clause, sub-clause, paragraph number, schedule, appendix or plan is a reference to a Recital, Clause or sub-clause of, paragraph number of, Schedule to, Appendix to or plan annexed to this Deed;
- 2.1.2 words importing the singular meaning include the plural meaning and vice versa;

- 2.1.3 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner; and
- 2.1.4 Act of Parliament shall include any amendment, modification, extension, consolidation or re-enactment of that Act for the time being in force and in each case shall include all statutory instruments, orders, regulations and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.2 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Deed.
- 2.3 Any notice, notification, consent, approval, agreement, request or statement or details to be made, given or submitted under or in connection with this Deed shall be made or confirmed in writing.
- 2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 2.5 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.
- 2.6 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.7 Each of the parties to this Deed shall act in good faith and shall co-operate with each of the other parties to facilitate the discharge and performance of all obligations on them contained in this Deed and the Owner shall comply with any reasonable requests of the Council or the County Council to provide documentation within its possession (such documentation to be provided by the Owner at their own expense) for the purposes of monitoring compliance with the obligations contained in this Deed.
- 2.8 Any approval, consent, direction, authority, agreement or action to be given by the Council or the County Council under this Deed shall not be unreasonably withheld or delayed.

3. **LEGAL BASIS**

- 3.1 The obligations in this Deed:
- 3.1.1 are to the extent they are lawfully able to be so made, made under section 106 of the 1990 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 1990 Act and are enforceable by the Council and the County Council where applicable and the parties agree that such obligations meet the requirements of Regulation 122 of the CIL Regulations; and
- 3.1.2 are otherwise made pursuant to other enabling powers including 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.
- 3.2 The obligations, covenants and undertakings on the part of the Owner in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and so bind the Owner's interest in the Site. Subject to Clause 9, the obligations, covenants and undertakings on the part of the Owner are entered into with the intent that they are enforceable not only against the Owner but also against any successors in title or assigns of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it. So far as the obligations, covenants and undertakings in this Deed are given by or to the Council or the County Council, they are entered into under the relevant powers referred to in Clause 3.1 and those obligations, covenants and undertakings are enforceable by or against the Council or the County Council.

- 3.3 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their statutory powers, duties, functions or discretions in relation to the Site or otherwise.
- 3.4 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:
- 3.4.1 is not a material planning consideration; or
 - 3.4.2 can be given no weight in determining the Appeal; or
 - 3.4.3 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

4. **CONDITIONAL ENTRY INTO FORCE**

4.1 This Deed is conditional on:

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

save for the provisions of Clauses 1, 2, 3, 4, 5, 6 (in respect of the obligations within Schedule 2 only), 8, 9, 10, 11 - 20 which shall come into effect immediately upon completion of this Deed and save for the provisions of Clause 6 in so far as any of the obligations in the Schedules come into effect prior to Commencement.

5. **DURATION**

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

- 5.1.1 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
- 5.1.2 is modified by any statutory procedure without the consent of the Owner and the Council; or
- 5.1.3 expires before Commencement.

6. **THE OWNER'S COVENANTS**

The Owner covenants with the Council and County Council as set out in Schedule 1, Schedule 2, Schedule 3, Schedule 4 and Schedule 5 of this Deed.

7. **THE COUNCIL'S COVENANTS**

The Council covenants with the Owner as set out in Schedule 6 of this Deed.

8. **THE COUNTY COUNCIL'S COVENANTS**

The County Council covenants with the Owner as set out in Schedule 6 of this Deed.

9. **SUCCESSORS IN TITLE AND RELEASE**

9.1 References in this Deed to the Council and the County Council include the successors to their statutory functions and include persons deriving title through or under them.

- 9.2 Subject to Clauses 9.3 and 9.4, references to the Owner or any other person include its heirs, assigns, successors in title and persons deriving title through or under them.
- 9.3 The obligations in this Deed are not binding on or enforceable against:
- 9.3.1 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;
 - 9.3.2 if he or it shall be an owner-occupier or tenant of any individual Dwelling (or a mortgagee of an individual Dwelling lending money to such owner-occupier or tenant) **SAVE FOR** an owner-occupier or tenant of an Affordable Dwelling who shall be bound by those obligations in Schedule 3 relating to the use of Affordable Dwellings; and
 - 9.3.3 the Chargee and any future mortgagee or chargee unless they come into possession of the Site (in which case they shall be bound as a person deriving title through the Owner).
- 9.4 If the Owner or Developer or any person disposes of its entire interest in the Site or in any part of it, that party or person will be released from its obligations in this Deed which will no longer be enforceable against that party or person in relation to the Site or that part of the Site disposed of, except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar.
- 9.5 The release of a party or any person under Clause 9.4 is without prejudice to any subsisting liability for any antecedent breach or antecedent failure to comply with its obligations arising before parting with that interest.
- 9.6 Nothing in this Deed will prevent compliance with any obligation under it before that obligation comes into effect and early compliance will not amount to a waiver of the effect of this Clause 9.
10. **MISCELLANEOUS**
- 10.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 10.2 This Deed shall be registrable as a local land charge by the Council.
- 10.3 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 and/or the County Council's reasonable and proper costs) the Council or the County Council will issue a written confirmation of such performance or discharge.
- 10.4 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 1990 Act in respect of the conditions relating to the Planning Permission (and for no other purpose whatsoever) references in this Deed to the Application and the Development shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly unless the Council confirms to the parties that this clause shall not apply and a further deed is required.
- 10.5 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.
- 10.6 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.
- 10.7 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council and County Council under all statutory by-laws, statutory instruments, orders and regulations in the exercise of their functions as a local authority.

11. **WAIVER**

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. **CHANGE IN OWNERSHIP**

The Owner agrees with the Council and the County Council to give the Council and the County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.

13. **INDEXATION**

Any sum to be paid to the Council or the County Council under this Deed will be adjusted by an amount equivalent to the change in the Index from the date of this Deed to the date on which such sum is paid to be calculated as follows:

$$A \times \frac{B}{C} = D$$

where:

A = the relevant sum as specified in this Deed in pounds sterling

B = Index at the date the relevant sum is paid

C = 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.

14. **INTEREST**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

15. **VAT**

15.1 Each amount stated to be payable by the Council, the County Council or the Owner to another party under or pursuant to this Deed is exclusive of VAT (if any).

15.2 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.

16. **DISPUTE PROVISIONS**

16.1 If a dispute between the parties persists beyond 20 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. The Expert will Act as an expert and not as an arbitrator.

16.2 Each party will bear its own costs and the Expert's costs will be paid as determined by him.

- 16.3 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. His decision will be given in writing with reasons and in the absence of manifest error or fraud will be binding on the parties.
- 16.4 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 an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
17. **LEGAL COSTS**
- 17.1 On completion of this Deed the Owner will pay to the Council the reasonable legal costs incurred in the negotiation, preparation and execution of this Deed.
- 17.2 On completion of this Deed the Owner will pay to the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this Deed.
18. **NOTICES**
- 18.1 The Owner will notify the Council and County Council of the following events:
- 18.1.1 Commencement of Development; and
- 18.1.2 first Occupation of any part of the Development.
- 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 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:
- 18.2.1 if delivered by hand, the next Working Day after the day of delivery;
- 18.2.2 if sent by post, the day two Working Days after the date of posting;
- 18.2.3 if sent by recorded delivery, at the time delivery was signed for; and
- 18.2.4 in respect of notices to the Council, if sent by email, by noon on the day following the date of the email.
- 18.3 If a notice, demand or any other communication is served after 16:00 on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 18.4 The address for any notice or other written communication shall be within the United Kingdom.
- 18.5 Where proceedings have been issued in the Courts of England the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings. A notice or communication will be served or given:
- 18.5.1 on the Owner at the address herein contained or such other address as notified in writing to the Council and the County Council from time to time, marked for the attention of the Owner;
- 18.5.2 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 Strategic Director for Place and if sent by email, emailed to RBC.Planning@rugby.gov.uk also marked for the attention of the Strategic Director for Place; and

18.5.3 on the County Council at Communities Directorate, 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; and

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

19. **JURISDICTION**

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.

20. **DELIVERY**

The provisions of this Deed (other than this Clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

21. **DEVELOPER'S CONSENT**

The Developer acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the covenants and obligations contained in this Deed and that the operation and exercise of their interest shall take effect subject to this Deed.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1

MONITORING CONTRIBUTIONS

1. DEFINITIONS

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

“Council Monitoring Contribution”	means the sum of £7,500(based upon £625.00 per obligation) to be used by the Council for the purpose of monitoring and supervising compliance with obligations contained in this Deed
“County Council Monitoring Contribution”	means the sum of £1,950 (based upon £1,350 + (5 hours x £40 officer time x number of triggers)) to be used by the County Council for the purpose of monitoring and supervising compliance with obligations contained in this Deed
“Habitat Monitoring Fee”	means the sum of £35,238 to be paid by the Owner to the Council to monitor the delivery of habitats on the Site for a period of 30 years

2. MONITORING CONTRIBUTIONS

2.1 The Owner covenant with the Council to:

- 2.1.1 upon Commencement of Development pay the Council Monitoring Contribution to the Council; and
- 2.1.2 Commencement of Development shall not take place until the Council Monitoring Contribution has been paid to the Council.

2.2 The Owner covenant with the County Council that:

- 2.2.1 upon completion of the Deed pay the County Council Monitoring Contribution to the County Council; and
- 2.2.2 Commencement of Development shall not take place until the County Council Monitoring Contribution has been paid to the County Council.

3. HABITAT MONITORING FEE

3.1 The Owner covenant with the Council to:

- 3.1.1 prior to first Occupation of the Development pay the Habitat Monitoring Fee to the Council; and
- 3.1.2 first Occupation of the Development shall not take place until the Habitat Monitoring Fee has been paid to the Council.

SCHEDULE 2

CONTRIBUTIONS

1. DEFINITIONS

1.1 In this Schedule the following words and phrases shall have the meanings ascribed to them in addition to the definitions of the words and phrases set out in Clause 1 of this Deed:

“Allotments Maintenance Contribution”	means the sum of £4,243.20 (Indexed) to be paid by the Owner to the Council and to be used by the Council for the maintenance of North Road Allotments in Clifton-upon-Dunsmore
“Allotments Provision Contribution”	means the sum of £14,776.32 (Indexed) to be paid by the Owner to the Council and to be used by the Council for the provision of North Road Allotments in Clifton-upon-Dunsmore
“Allotments Contributions”	means the Allotments Maintenance Contribution and the Allotments Provision Contribution
“Amenity Greenspace”	means the amenity greenspace to be provided as part of the Development [TBC]
“Amenity Greenspace Contribution”	means the sum of £13,770 (Indexed) to be paid by the Owner to the Council in the event that the Amenity Greenspace is Transferred and to be used by the Council for the management and maintenance of the Amenity Greenspace
“Bus Service Contribution”	means the sum of £415,460 (Indexed) to be paid by the Owner to the County Council towards enhancing the frequency of existing bus services fronting the Site to every 45 minutes
“Children and Young People Provision”	means the provisions for children and young people to be provided as part of the Development [TBC]
“Children and Young People Maintenance Contribution”	means the sum of £20,370 (Indexed) to be paid by the Owner to the Council in the event that the Children and Young People Provision is Transferred and to be used by the Council for the [TBC]
“Early Years Contribution”	means the sum of £387,379 (Indexed) to be paid by the Owner to the County Council and to be used by the County Council towards the provision of additional early years provision in the local area to service the Development.
“Education Contributions”	means together the Early Years Contribution, the Primary SEND Contribution, the Post 16 Education Contribution, the Secondary Education Contribution and the Secondary and Post 16 SEND Contribution and the total of the contributions being the sum of £1,783,970 (Indexed) to be paid by the Owner to the County Council and to be used by the County Council towards the provision of additional Early Years, Primary SEND, Post 16, Secondary and Secondary and Post 16 SEND provision in the local area to service the Development provision
“Libraries Contribution”	means the sum of £3,502 (Indexed) to be paid by the Owner to the County Council and to be used by the County Council towards the provision of additional library facilities and services in the vicinity of the Site

“Lighting Contribution”	means the sum of £30,000 (Indexed) to be paid by the Owner to the Council towards improvements of floodlights at the tennis courts at Clifton Recreation Ground
“Lighting Maintenance Contribution”	means the sum of £1,200 (Indexed) annually for a period of ten years to be paid by the Owner to the Council towards maintenance of floodlights at the tennis courts at Clifton Recreation Ground
“MOVA Signal Control Contribution”	means the sum of £6,000 (Indexed) to be paid by the Covenantors to the County Council towards the upgrade/ re-validation of the MOVA signal controls at Butlers Leap, Houlton Way and The Kent
“Natural and Semi-Natural Greenspaces”	means the natural and semi-natural greenspaces to be provided as part of the Development [TBC]
“Natural and Semi-Natural Greenspaces Contribution”	means the sum of £31,065 (Indexed) to be paid by the Owner to the Council in the event that the Natural and Semi-Natural Greenspaces are Transferred and to be used by the Council for the [TBC]
“NHS Integrated Care Board Contribution”	means the sum calculated on the basis of the number of Dwellings delivered pursuant to any Reserved Matters Approval at a cost per Dwelling of £1,507.18 subject to the maximum amount of £241,149 (Indexed) to be paid by the Owner to the Council and to be used by the Council towards improvements to off-site primary medical care and healthcare infrastructure capacity at Brownsover Medical Centre, Beech Tree Medical Practice, Market Quarter Medical Practice, Clifton Road Surgery and Whitehall Medical Practice
“Parks and Gardens”	means the parks and gardens to be provided as part of the Development [TBC]
“Parks and Garden Maintenance Contribution”	means the sum of £57,950 (Indexed) to be paid by the Owner to the Council in the event that the Parks and Gardens are Transferred and to be used by the Council for the management and maintenance of the Parks and Gardens
“Pedestrian and Cycleway Improvements Contribution”	means the sum of £1,556,680 (Indexed) to be paid by the Owner to the County Council for pedestrian and cycle improvements towards Rugby Railway Station, Rugby Town Centre and local employment areas
“Primary SEND Contribution”	means the sum of £148,120 (Indexed) to be paid by the Owner to the County Council and to be used by the County Council towards the provision of additional primary SEND provision in the local area to service the Development.
“Post 16 Education Contribution”	means the sum of £180,288 (Indexed) to be paid by the Owner to the County Council and to be used by the County Council towards the provision of additional post 16 provision in the local area to service the Development.
“PROW Contribution”	means the sum of £9,000 (Indexed) to be to be paid by the Owner to the County Council and to be used by the County Council towards the improvements of public rights of way within a 1.5 mile radius of the Site including RB1-RB3c RB22-RB27 RB29 RB44 RB45 RB48 RB49 R104-R112a R114 R114a R116 R202 R270 R271.
“Road Safety Contribution”	means the sum of £8,000 (Indexed) to be paid by the Owner to the County Council and to be used by the County Council towards road safety initiatives within the community associated with the Development

including education for schools and training/education for other vulnerable road users within the vicinity of the Site

“Secondary Education Contribution”

means the sum of £878,904 (Indexed) to be paid by the Owner to the County Council and to be used by the County Council towards additional secondary provision in the local area to service the Development.

“Secondary and Post 16 Education SEND Contribution”

means the sum of £169,280 (Indexed) to be paid by the Owner to the County Council and to be used by the County Council towards additional secondary and post 16 SEND provision in the local area to service the Development.

“Sports Pitch Contribution”

means the sum calculated on the basis of the number of Dwellings delivered pursuant to any Reserved Matters Approval at a cost per Dwelling of £20.53 subject to the maximum amount of £3,284.18 (Indexed) to be paid by the Owner to the Council and to be used by the Council towards the improvement of the grass football pitch at Clifton Recreation Ground

“Transfer”

means the transfer by the Owner to the Council and/or Parish Council of the unencumbered freehold interest in one or more of the following: the Amenity Greenspace, Children and Young People Provision, the Natural and Semi-Natural Greenspaces and the Parks and Gardens or any part thereof on the following terms:

- (a) the Owner shall bear the other parties to the transfer's reasonable legal, professional and any SDLT costs of the transfer;
- (b) shall not include any terms which would restrict public access save for the purposes of maintenance or repair works, for health and safety reasons or in the case of emergency;
- (c) shall not include any terms which would directly or indirectly affect the construction servicing or occupation of the part of the Land that is retained by the Owner and shall include any rights necessary to facilitate the same;
- (d) shall include any reasonable reservation of rights of access and services over the Amenity Greenspace, Children and Young People Provision, the Natural and Semi-Natural Greenspaces and the Parks and Gardens (as applicable) for the benefit of any other part of the Land for the purpose of laying managing maintaining replacing renewing cleaning and repairing services;
- (e) shall include for the benefit of the Amenity Greenspace, Children and Young People Provision, the Natural and Semi-Natural Greenspaces and the Parks and Gardens (as applicable) the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the Amenity Greenspace, Children and Young People Provision, the Natural and Semi-Natural Greenspaces and the Parks and Gardens (as applicable) over any adjoining land for its intended purpose as set out in this Schedule;
- (f) shall be at nil consideration; and



subject to the considerations at (b) to (e) above, shall provide that the Amenity Greenspace, Children and Young People Provision, the

Natural and Semi-Natural Greenspaces and the Parks and Gardens (as applicable) shall not be used for any purpose other than for a publicly accessible area for general recreational use and the term “**Transferred**” shall be construed accordingly

“TRO Contribution”

means the sum of £12,000 (Indexed) to be paid by the Covenantors to the County Council and to be used by the County Council to process and advertise a traffic regulation order pursuant to the Road Traffic Regulation Act 1984 to regulate the speed limit on Rugby Road in the vicinity of the Site

2. CONTRIBUTIONS

2.1 The Owner covenants with the Council and the County Council to:

2.1.1 Allotments Contribution

- (a) prior to first Occupation of the Development pay the Allotments Contributions to the Council; and
- (b) Occupation of Development shall not take place until the Allotments Contributions have been paid to the Council;

2.1.2 Education Contributions

- (a) prior to 25% Occupation of the Development the Owner shall pay 50% of the Education Contributions to the County Council;
- (b) Prior to 75% Occupation of the Development the Owner shall pay 50% of the Education Contributions to the County Council
- (c) Occupation of more than 25% of the Development shall not take place until the payment referred to in paragraph (a) above has been paid to the County Council
- (d) Occupation of more than 75% of the Development shall not take place until the payment referred to in paragraph (b) above has been paid to the County Council.

2.1.3 Libraries Contribution

- (a) prior to first Occupation of the Development pay the Libraries Contribution to the County Council; and
- (b) Occupation of Development shall not take place until the Libraries Contribution has been paid to the County Council;

2.1.4 PROW Contribution

- (a) Prior to first Occupation of the Development the Owner shall pay the PROW Contribution to the County Council; and
- (b) Occupation of Development shall not take place until the Owner has paid the PROW Contribution to the Council;

2.1.5 Lighting Maintenance Contribution

- (a) the Owner shall pay the first instalment of the Lighting Maintenance Contribution to the Council prior to first Occupation of the Development; and

- (b) on the first anniversary of payment to the Council of the first instalment of the Lighting Maintenance Contribution pursuant to paragraph 2.1.5(a) above the Covenantors/Owner shall pay the second instalment of the Lighting Maintenance Contribution to the Council and an instalment for each anniversary thereafter until all ten instalments have been paid to the Council;

2.1.6 Lighting Contribution

- (a) Prior to first Occupation of the Development the Owner shall pay the Lighting Contribution to the Council; and
- (b) Occupation of the Development shall not take place until the Owner has paid the Lighting Contribution to the Council;

2.1.7 Road Safety Contribution

- (a) Prior to first Occupation of the Development the Owner shall pay the Road Safety Contribution to the County Council; and
- (b) Occupation of Development shall not take place until the Owner has paid the Road Safety Contribution to the County Council;

2.1.8 NHS Integrated Care Board Contribution

- (a) prior to first Occupation of the Development pay the NHS Integrated Care Board Contribution to the Council; and
- (b) Occupation of Development shall not take place until the NHS Integrated Care Board Contribution has been paid to the Council;

2.1.9 Sports Pitch Contribution

- (a) prior to first Occupation of the Development pay the Sports Pitch Contribution to the Council; and
- (b) Occupation of Development shall not take place until the Sports Pitch Contribution has been paid to the Council;

2.1.10 Amenity Greenspace Contribution

- (a) in the event that the Amenity Greenspace or part of is to be Transferred:
 - (i) prior to the completion of the Transfer of the Amenity Greenspace pay the Amenity Greenspace Contribution to the Council; and
 - (ii) the Transfer of the Amenity Greenspace shall not take place until the Amenity Greenspace Contribution has been paid to the Council;

2.1.11 Children and Young People Contribution

- (a) in the event that the Children and Young People Provision or part of is to be Transferred:
 - (i) prior to completion of the Transfer of the Children and Young People Provision pay the Children and Young People Contribution to the Council; and
 - (ii) the Transfer of the Children and Young People Provision shall not take place until the Children and Young People Contribution has been paid to the Council;

2.1.12 Natural and Semi-Natural Greenspaces Contribution

- (a) in the event that the Natural and Semi-Natural Greenspaces or part of are to be Transferred:
 - (i) prior to completion of the Transfer of the Natural and Semi-Natural Greenspaces pay the Natural and Semi-Natural Greenspaces Contribution to the Council; and
 - (ii) the Transfer of the Natural and Semi-Natural Greenspaces shall not take place until the Natural and Semi-Natural Greenspaces Contribution has been paid to the Council;

2.1.13 Parks and Gardens Maintenance Contribution

- (a) in the event that the Parks and Gardens or part of are to be Transferred:
 - (i) prior to completion of the Transfer of the Parks and Gardens pay the Parks and Gardens Maintenance Contribution to the Council; and
 - (ii) the Transfer of the Parks and Gardens shall not take place until the Parks and Gardens Maintenance Contribution has been paid to the Council.

2.1.14 MOVA Signal Control Contribution

- (a) Prior to first Occupation of the Development the Owner shall pay the MOVA Signal Control Contribution to the County Council; and
- (b) Occupation of Development shall not take place until the Owner has paid the MOVA Signal Control Contribution to the Council

2.1.15 Bus Service Contribution

- (a) The Owner shall pay the Bus Service Contribution to the County Council in the following instalments:
 - (i) £103,865 prior to first Occupation of the Development;
 - (ii) £103,865 on the first anniversary of the payment made pursuant to paragraph 2.1.15(a)(i) above
 - (iii) £103,865 on the second anniversary of the payment made pursuant to paragraph 2.1.15(a)(i)above
 - (iv) £103,865 on the third anniversary of the payment made pursuant to paragraph 2.1.15(a)(i)above
- (b) Occupation of Development shall not take place until the Owner has paid the payment pursuant to paragraph 2.1.15(a)(i) to the County Council.

2.1.16 Pedestrian and Cycleway Improvements Contribution

- (a) Prior to Commencement of Development the Covenantors shall pay 25% of the Pedestrian and Cycleway Improvements Contribution;
- (b) Commencement of Development shall not take place until the Covenantors have paid 25% of the Pedestrian and Cycleway Improvements Contribution;
- (c) Prior to the Occupation of 25% of the Dwellings the Covenantors shall pay a further 25% of the Pedestrian and Cycleway Improvements Contribution;

- (d) Occupation of more than 25% of the Development shall not take place until the Covenantors have paid 50% of the Pedestrian and Cycleway Improvements Contribution;
- (e) Prior to Occupation of 50% of the Dwellings the Covenantors shall pay the balance of the Pedestrian and Cycleway Improvements Contribution; and
- (f) Occupation of more than 50% of the Dwellings shall not take place until the Covenantors have paid the Pedestrian and Cycleway Improvements Contribution.

2.1.17 TRO Contribution

- (a) Prior to Commencement of Development the Covenantors shall pay the TRO Contribution; and
- (b) Commencement of Development shall not take place until the Covenantors have paid the TRO Contribution.

SCHEDULE 3

AFFORDABLE HOUSING

1. DEFINITIONS

1.1 In this Schedule the following words and phrases shall have the meanings ascribed to them in addition to the definitions of the words and phrases set out in Clause 1 of this Deed:

- "Advertising Scheme"** means the marketing protocol applicable to Subsequent Disposals of Private Intermediate Dwellings to Qualifying Purchasers for the Minimum Timeframe and by a reputable local estate agent and/or through another physical or online platform facilitating the marketing of Intermediate Dwellings and approved by the Council in writing
- "Affordable Dwellings"** means a Dwelling to be provided for Affordable Housing in accordance with this Deed
- "Affordable Housing"** means housing which is available to persons who have a housing need or are on a low income insufficient to meet their housing need in the open market either to rent or purchase as defined in the National Planning Policy Framework
- "Affordable Housing Agreement"** means an agreement for the construction and transfer of Affordable Dwellings between the Owner and Affordable Housing Provider on terms that shall include the following:
- (a) the Affordable Housing Provider shall bear its own legal costs in relation to any contracts and transfers associated with the Affordable Dwellings governed by the Affordable Housing Agreement;
 - (b) the Owner and Affordable Housing Provider will agree a specification for the construction of the Affordable Dwellings which is compatible with the Planning Permission; and
 - (c) such other reasonable terms as the parties to the agreement may agree
- "Affordable Housing Provider"** means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with the Regulator of Social Housing and has not been removed from the register and as agreed in advance of any transfer in writing by the Council such agreement not to be unreasonably withheld or delayed
- "Affordable Housing Scheme"** means a written scheme for the entire Site setting out the following in relation to the Affordable Dwellings:
- (a) the types, size, number, location and tenures of the Affordable Dwellings (consistent with the Affordable Housing Tenure Mix);
 - (b) in the case of the Social Rent Dwellings and Affordable Rent Dwellings (as applicable), estimates of the following costs: rent, service charges and/or estate rent charges and/or any other charges that may be imposed by the Covenantors on tenants of each Social Rent Dwelling and Affordable Rent Dwelling on first Occupation of such

dwelling **PROVIDED THAT** the Covenantors shall use reasonable endeavours to ensure that any such service, estate rent or other charges are minimised and where possible shall work with any relevant Affordable Housing Provider that is a party to an Affordable Housing Agreement to seek to ensure the same;

- (c) in respect of Intermediate Dwellings (including Private Intermediate Dwellings (if any)), the arrangements for marketing and disposal including the definition of Qualifying Purchaser and sale price and any other details reasonably required by the Council having regard to the specific tenure of the Intermediate Dwelling;
- (d) in respect of the Discount Market Dwellings (if any) the Discount Market Dwelling Scheme

"Affordable Housing Tenure Mix"

means the tenure types and the proportions of those tenure types as specified in paragraph 4.1 of this Schedule or such other tenure types and/or proportions of tenure types as may be agreed by the Council pursuant to the provisions of this Schedule

"Affordable Rent Dwellings"

means Affordable Dwellings (if any) to be offered and occupied via an Affordable Housing Provider let at a rent not exceeding 80% of the local market rent (including service charges, where applicable) in accordance with Annex 2 of the National Planning Policy Framework and **"Affordable Renting"** shall be construed accordingly

"Assured Tenancy"

means an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 as amended by the Housing Act 1996 or such other similar form of periodic tenancy permitted under statute

"Chargee"

means any mortgagee or chargee or any receiver or manager (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any other security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including all such regulated entities which provide Shari'ah compliant finance and a housing administrator of the whole or any part of the Affordable Dwellings

"Discount Market Dwellings"

means Affordable Dwellings to be sold on a freehold basis to a Qualifying Purchaser at the Maximum Price in accordance with (for Initial Disposals) the Discount Market Dwelling Scheme and (for Subsequent Disposals) the Advertising Scheme (if any)

"Discount Market Dwelling Scheme"

means a scheme setting out the following details in relation to the Discount Market Dwellings (if any):

- (a) definition of Qualifying Purchaser;
- (b) marketing protocol for the initial disposal of the Discount Market Dwellings targeted at Qualifying Purchasers and for the Minimum Time Frame applicable to Initial Disposals;
- (c) the Title Restriction and any other restrictions and covenants to be included in any agreement for sale and transfer of a Discount Market Dwelling to ensure it remains a Discount Market Dwelling in perpetuity (subject

to the procedure for release as set out at paragraph 6.7 of this Schedule and exemptions set out at paragraph 6.8 of this Schedule)

"Fallback AH Contribution"

means a contribution to be paid to the Council in lieu of the provision of Affordable Dwellings to be applied to the provision of Affordable Housing in the Council's administrative area which shall be calculated as follows:

TOTAL NUMBER OF AFFORDABLE DWELLINGS REQUIRED

MULTIPLIED BY

BUILD COST OF THE REQUIRED DWELLINGS

PLUS

LAND COST

MINUS

THE AMOUNT EQUIVALENT TO THAT WHICH WOULD BE PAYABLE BY AN AFFORDABLE HOUSING PROVIDER

EQUALS

THE SUM PAYABLE

Where:

Build costs are determined in line with the viability assessment supporting the Council's Local Plan as at the date of this Deed

Land costs are based on the most up to date information as at the date of the calculation of the Fallback AH Contribution

The amount payable by an Affordable Housing Provider represents a reasonable estimate based on offers received for the Affordable Dwellings or (in the absence of offers) offers for comparable units in reasonably comparable locations in the Council's administrative area

"Household"

means anyone who may reasonably be expected to reside with the Qualifying Purchaser

"Initial Disposals"

means first disposals following Practical Completion of the Affordable Dwellings

"Intermediate Dwellings"

means:

- (a) Shared Ownership Dwellings;
- (b) Affordable Housing of any other form of intermediate tenure (i.e. excluding Social Rent Dwellings and Affordable Rent Dwellings) endorsed in the National Planning Policy Framework or other similar guidance and managed by an Affordable Housing Provider; and
- (c) Discount Market Dwellings and other Private Intermediate Dwellings,

each as first approved in writing by the Council

"Market Dwellings"

means those Dwellings which are not Affordable Dwellings

"Market Value"

means the best price that might reasonably be expected for the freehold or (where applicable) long leasehold of a Dwelling of the relevant type from a private purchaser assuming that it was a Market Dwelling calculated in accordance with the RICS Manual of Valuation Practice (Red Book) current at the time of valuation and expressed as a value per square metre and the market value shall be calculated:

- (a) in respect of Initial Disposals, as the average based on the valuations undertaken by three valuers independent to the party that seeks to establish the market value and copies of the three valuations shall be provided in writing to the Council when the party seeks to establish the Market Value and
- (b) in respect of Subsequent Disposals, as the average based on the valuations undertaken by two valuers independent to the party that seeks to establish the market value and copies of the two valuations shall be provided in writing to the Council when the party seeks to establish the Market Value

SAVE THAT in respect of all sales the Council is permitted to seek a re-valuation based on the Council's choice of market comparables in the event the valuations are more than 10% apart from one another

"Maximum Price"

means unless otherwise agreed by the Council in its absolute discretion in writing, a price which shall not exceed 80% of the Market Value of the Discount Market Dwelling as at the date of the final valuations provided to the Council to evidence Market Value.

"Minimum Timeframe"

means:

- (a) in respect of initial disposals of Intermediate Dwellings by the Owner, timeframes consistent with the marketing cascade set out in paragraph 6 of this Schedule; and
- (b) in respect of Subsequent Disposals of Intermediate Dwellings by or on behalf of owners of the Intermediate Dwellings from time to time, three months from approval in writing of the Market Value and Advertising Scheme by the Council

"National Planning Policy Framework"

means the government's planning policies for England first published on 27 March 2012 and most recently updated in February 2026 and as may be further updated from time to time

"Private Intermediate Dwelling"

means any Intermediate Dwelling other than a Discount Market Dwelling which is not managed by an Affordable Housing Provider and is approved by the Council in writing

"Qualifying Purchaser"

means persons (together with their Household) whose needs are not met on the open market where eligibility is determined with regard to local incomes and local house prices and any other criteria as the Council may determine are appropriate having regard to any national legislation and national policy then in force relevant

	to Affordable Housing together with local needs and locally adopted policy
"Regulator of Social Housing"	means an executive non-departmental public body, sponsored by the Department for Levelling Up, Housing and Communities, set up to promote a viable, efficient and well-governed social housing sector able to deliver and maintain homes of appropriate quality that meet a range of needs
"Serviced"	means the provision of vehicular and pedestrian access, utilities, ducting to facilitate high speed broadband and foul and surface water drainage to the boundary of the relevant land in order that the users of the relevant land can connect into these services
"Shared Ownership Dwellings"	means Affordable Dwellings in which the occupiers own an initial percentage of the Affordable Dwelling being less than 75% and the remainder is owned by an Affordable Housing Provider but with the right for the occupier to purchase further percentages of the Affordable Dwelling up to 100% where permitted under the Shared Ownership Lease
"Shared Ownership Lease"	means a lease of a Shared Ownership Dwelling on Homes England's or the Affordable Housing Provider's standard form and subject to all relevant housing and enfranchisement legislation that may apply
"Social Rent Dwellings"	means Affordable Dwellings to be offered and occupied via an Affordable Housing Provider pursuant to an Assured Tenancy in respect of which rents (including service charges) are determined in accordance with the rent standard in "The Regulatory Framework for Social Housing in England, April 2015" published by the Regulator of Social Housing (as may be updated or replaced from time to time) and in accordance with Annex 2 of the National Planning Policy Framework and which shall be offered for rent by an Affordable Housing Provider to persons who are otherwise unable to secure private sector housing for purchase or rent in the prevailing economic circumstances and who have in the opinion of the Council need for such housing and "Social Renting" shall be construed accordingly
"Subsequent Disposals"	means disposals other than Initial Disposals, by individual owners/occupiers of the Affordable Dwellings
"Tenure Blind"	means in relation to the Affordable Dwellings indistinguishable from Market Dwellings in terms of design, external appearance and quality of materials
"Title Restriction"	means a title restriction to be entered into the Land Registry Proprietorship Register of any Discount Market Dwelling in the following terms (subject to any amendments thereto required by the Land Registry and agreed by the Owner or the owner of the Discount Market Dwelling from time to time and the Council): <i>"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by Rugby Borough Council's Legal Services that the provisions of paragraphs [] of the Schedule to the Section 106 Agreement dated [] containing planning obligations relating to land south east of Rugby Road,</i>

Clifton upon Dunsmore have been complied with or are not relevant to the disposition"

2. **AFFORDABLE HOUSING SCHEME**

2.1 The Owner covenant with the Council:

2.1.1 prior to the Commencement of Development in each Reserved Matters Area, to submit in writing to the Council the Affordable Housing Scheme for that Reserved Matters Area for the Council's approval; and

2.1.2 not to Commence Development in a Reserved Matters Area unless and until the Affordable Housing Scheme for that Reserved Matters Area has been approved in writing by the Council.

2.2 The Owner shall be permitted to seek to amend any approved Affordable Housing Scheme (including Discount Market Dwelling Scheme, where applicable) at any time following the approval of the Affordable Housing Scheme **SAVE THAT** the Owner shall first submit such amendments to the Council in writing for its prior approval and obtain the Council's written approval to such amendments before such amendments may be implemented.

3. **PROVISION OF AFFORDABLE HOUSING**

3.1 The Owner covenant with the Council:

3.1.1 to provide or procure the provision of 30% of the Dwellings across the Development as Affordable Dwellings;

3.1.2 to provide or procure that the Affordable Dwellings shall be provided as follows:

- (a) Serviced;
- (b) in accordance with the Affordable Housing Tenure Mix set out in paragraph 4.1 below (save where a revised Affordable Housing Tenure Mix has been approved pursuant to the provisions of paragraph 4.2 below);
- (c) in accordance with the latest approved Affordable Housing Scheme for the relevant Reserved Matters Area;
- (d) as Affordable Dwellings by an Affordable Housing Provider approved in writing by the Council;
- (e) Tenure Blind; and
- (f) in respect of the Social Rent Dwellings or Affordable Rent Dwellings to be managed by an Affordable Housing Provider:
 - (i) pursuant to a choice based local lettings scheme arrangement required by the Council and/or a nomination agreement with the Council on the following terms:
 - (1) the Affordable Housing Provider's standard terms (unless a local letting scheme is required by the Council); and
 - (2) unless otherwise agreed in writing between the Affordable Housing Provider and the Council, the Council will retain 100% of the first nomination rights and 75% of the subsequent nomination rights;

3.1.3 that no Social Rent Dwelling or Affordable Rent Dwelling managed by an Affordable Housing Provider and approved by the Council under this Schedule shall be Occupied unless and until a nomination agreement and/or choice based local lettings scheme arrangement (as applicable) has been entered into in relation to the relevant Affordable Dwelling.

4. **AFFORDABLE HOUSING TENURE MIX**

4.1 The Affordable Housing Tenure Mix shall, save as where provided otherwise in this Schedule, be as follows within each Reserved Matters Area:

4.1.1 70% of the Affordable Dwellings are to be Social Rent Dwellings or Affordable Rent Dwellings; and

4.1.2 30% of the Affordable Dwellings are to be Intermediate Dwellings.

4.2 The Owner shall be permitted to seek to amend the Affordable Housing Tenure Mix prior to Commencement of Development of a Reserved Matters Area **SAVE THAT** in seeking to do so the Owner shall first submit such amendments to the Council for its approval, together with written reasons for the variation, and obtain the Council's written approval to such amendments before such amendments may be implemented and in the event that the Affordable Housing Tenure Mix for a Reserved Matters Area is amended this could require amendments to be made to the Affordable Housing Tenure Mix in later Reserved Matters Areas.

5. **DISPOSAL OF DISCOUNT MARKET DWELLINGS AND PRIVATE INTERMEDIATE DWELLINGS – SPECIFIC REQUIREMENTS (WHERE APPLICABLE)**

5.1 **Initial Disposals**

5.1.1 The Owner shall in respect of Initial Disposals of any Discount Market Dwellings:

- (a) not dispose of any Discount Market Dwellings until the Discount Market Dwelling Scheme has been approved by the Council in writing;
- (b) only dispose of the Discount Market Dwellings to Qualifying Purchasers and at the Maximum Price in accordance with the approved Discount Market Dwelling Scheme; and
- (c) market the Discount Market Dwellings in accordance with the marketing cascade set out in paragraph 6 below;

5.1.2 The Owner shall in respect of Initial Disposals of any Private Intermediate Dwellings:

- (a) not dispose of the Private Intermediate Dwellings otherwise than in accordance with details approved as part of the Affordable Housing Scheme;
- (b) only dispose of the Private Intermediate Dwellings to Qualifying Purchasers and in accordance with details (including but not limited to sale price) approved as part of the Affordable Housing Scheme; and
- (c) market the Private Intermediate Dwellings in accordance with the marketing cascade set out in paragraph 6 below.

5.2 **Subsequent Disposals**

5.2.1 Subsequent Disposals by individual owners of Discount Market Dwellings shall not take place unless and until the Council has approved in writing the Market Value, Maximum Price and the Advertising Scheme for the relevant Discount Market Dwelling(s).

5.2.2 Subsequent Disposals by individual owners of the Private Intermediate Dwellings shall not take place unless and until the Council has approved in writing the Market Value, sale price

(which shall not in respect of Private Intermediate Dwellings for sale exceed 80% Market Value) and the Advertising Scheme for the relevant Private Intermediate Dwelling(s).

- 5.2.3 In the event that the individual owners of Discount Market Dwellings or Private Intermediate Dwellings are unable to complete a disposal to a Qualifying Purchaser in accordance with paragraphs 5.2.1 and 5.2.2 above (as applicable) within the Minimum Timeframe such Discount Market Dwellings or Private Intermediate Dwellings (as applicable) may be sold at the relevant discounted price specified in this Schedule and subject to the Title Restriction (or equivalent form of protection to ensure the discount is passed onto successors in title agreed pursuant to this Schedule) to any willing purchaser but at the time of any Subsequent Disposal the provisions of this Schedule shall again apply and such purchaser shall remain bound by the terms of this Schedule.

6. INITIAL MARKETING AND DISPOSAL OF ALL AFFORDABLE DWELLINGS – GENERAL REQUIREMENTS (AS APPLICABLE)

6.1 First stage of marketing in accordance with the approved Affordable Housing Tenure Mix

- 6.1.1 No later than six months from Commencement of Development of each Reserved Matters Area (the “**Longstop Date**”), the Owner covenant with the Council to have used all reasonable endeavours for a period of no less than six months:

- (a) to market the Affordable Dwellings (which are to be managed by an Affordable Housing Provider) to at least 4 (four) Affordable Housing Providers (first approved in writing by the Council) and to enter into an Affordable Housing Agreement with one or more of such approved Affordable Housing Providers in respect of the same and forthwith upon such Affordable Housing Agreement(s) having been entered into the Owner shall notify the Council of the identity of the Affordable Housing Provider(s) which is or are party to such Affordable Housing Agreement(s) together with details of the number, size, type, tenure and location of the Affordable Dwellings the subject of the Affordable Housing Agreement(s);
- (b) to market the Discount Market Dwellings (if any) in accordance with the approved Discount Market Dwelling Scheme and forthwith upon exchange of contracts with a Qualifying Purchaser in respect of such units, the Owner shall notify the Council of the property details, details of the Qualifying Purchaser and the Maximum Price; and
- (c) to market the Private Intermediate Dwellings (if any) in accordance with the details approved as part of the Affordable Housing Scheme and forthwith upon exchange of contracts with a Qualifying Purchaser in respect of such units the Owner shall notify the Council of the property details, details of the Qualifying Purchaser and the final sale price.

6.2 Revised Affordable Housing Tenure Mix

- 6.2.1 If by the Longstop Date an Affordable Housing Agreement has not been entered into in respect of the Affordable Dwellings to be provided by an Affordable Housing Provider and/or contracts have not been exchanged in respect of any Discount Market Dwelling or Private Intermediate Dwelling then:

- (a) where the reason for a lack of offers is identified as being the Affordable Housing Tenure Mix:
 - (i) the Owner may apply to the Council in writing to revise the Affordable Housing Tenure Mix for from that set out in paragraph 4.1 above and in doing so the Owner shall provide the Council with the following:
 - (1) written reasons for the variation from the original Affordable Housing Tenure Mix for approval;

- (2) in respect of the Affordable Dwellings to be managed by an Affordable Housing Provider, evidence that the Owner have used reasonable endeavours to market the said Affordable Dwellings to at least four Affordable Housing Providers (first approved in writing by the Council);
- (3) in respect of the Discount Market Dwellings (if any), evidence to show that the Owner have marketed the said Discount Market Dwellings in accordance with the approved Discount Market Dwelling Scheme; and
- (4) in respect of the Private Intermediate Dwellings (if any), evidence to show that the Owner have marketed the said Private Intermediate Dwellings in accordance with the details approved as part of the Affordable Housing Scheme.

6.3 **Second stage of marketing in accordance with a revised Affordable Housing Tenure Mix**

6.3.1 If the Council approves the revised Affordable Housing Tenure Mix then the Owner shall use reasonable endeavours for a further period of three months to enter into an Affordable Housing Agreement / exchange contracts with a Qualifying Purchaser on the basis of the revised approved Affordable Housing Tenure Mix and shall market:

- (a) the Affordable Dwellings to be managed by an Affordable Housing Provider to at least 4 (four) Affordable Housing Providers first approved in writing by the Council);
- (b) the Discount Market Dwellings (if any) in accordance with the approved Discount Market Dwelling Scheme (as may be amended in accordance with paragraph 2.2 to reflect the revised Affordable Housing Tenure Mix); and
- (c) any Private Intermediate Dwelling (if any), in accordance with the details approved as part of the Affordable Housing Scheme (as may be amended in accordance with paragraph 2.2 to reflect the revised Affordable Housing Tenure Mix).

6.3.2 Following successful marketing pursuant to paragraph 6.3.1 above, to enter into an Affordable Housing Agreement with one or more of such approved Affordable Housing Providers / exchange contracts with a Qualifying Purchaser (as applicable) and forthwith upon such Affordable Housing Agreement(s) having been entered into / contracts having been exchanged with a Qualifying Purchaser, the Owner shall notify the Council of:

- (a) in respect of the Affordable Dwellings to be managed by an Affordable Housing Provider, the identity of either the Affordable Housing Provider(s) which is or are party to such Affordable Housing Agreement(s) together with details of the number, size, type and tenure of the Affordable Dwellings the subject of the Affordable Housing Agreement(s);
- (b) in respect of the Discount Market Dwellings (if any), and by completion of the Council's standard form if available, the property details, details of the Qualifying Purchaser and the Maximum Price; and
- (c) in respect of the Private Intermediate Dwellings (if any), the property details, details of the Qualifying Purchaser and final sale price (which shall not in Private Intermediate Dwellings for sale exceed 75% of the Market Value).

6.4 **Offer to the Council**

6.4.1 Where the reason for lack of offers is not the Affordable Housing Tenure Mix and the first and second marketing stages pursuant to paragraphs 6.1 and 6.3 have failed the provisions of paragraph 6.4.3 below shall apply:

- 6.4.2 In the event that the Owner re-market the Affordable Dwellings in the circumstances referred to in paragraph 6.3.1 above but is not able to enter into an Affordable Housing Agreement / exchange contracts with a Qualifying Purchaser on the basis of an approved revised Affordable Housing Tenure Mix despite the Owner having used reasonable endeavours to do so for a further period of three months then the provisions of paragraph 6.4.3 shall apply.
- 6.4.3 Where the provisions of paragraph 6.4.1 or 6.4.2 above apply:
- (a) the Owner shall provide written evidence to the Council to satisfy the Council that the Owner have in accordance with the provisions of paragraph 6.1.1 or 6.2.1 used reasonable endeavours to enter into an Affordable Housing Agreement(s) / exchange contracts with a Qualifying Purchaser, such information to include details of all offers received and marketing undertaken and:
 - (i) in respect of the Affordable Dwellings to be provided by an Affordable Housing Provider, evidence of negotiations with at least 4 (four) Affordable Housing Providers (previously approved in writing by the Council);
 - (ii) in respect of the Discount Market Dwellings (if any), evidence of marketing in accordance with the Discount Market Dwelling Scheme; and
 - (iii) in respect of the Private Intermediate Dwellings (if any) evidence of marketing in accordance with the details approved as part of the Affordable Housing Scheme;
 - (b) if the Council (acting reasonably) confirms in writing setting out its reasons why it is not satisfied that the Owner have used reasonable endeavours to comply with the obligations set out in paragraph 6.1.1 or (as applicable) paragraph 6.2.1(a) above then the Owner shall be required to repeat the process set out in paragraph 6.1.1 or (as applicable) paragraph 6.2.1(a) above until such time as the Council is satisfied that the Owner have discharged its obligations **PROVIDED THAT** if the Council has not confirmed its satisfaction within three months from the date of its first confirmation pursuant to this paragraph 6.4.3(b) then the matter shall be referred to an Expert for determination pursuant to Clause 15.2 of this Deed;
 - (c) in the event the Council in writing confirms its satisfaction that the Owner has discharged its obligations set out in paragraph 6.1.1 or (as applicable) paragraph 6.2.1(a) above then the Owner shall offer to transfer to the Council the freehold or leasehold interest in the relevant Affordable Dwellings together with the land on which the Affordable Dwellings will be constructed on the basis that:
 - (d) the Owner shall construct the Affordable Dwellings prior to transfer of the completed Affordable Dwellings to the Council; and
 - (e) the Owner shall bear its own and the Council's legal costs in relation to any contracts and transfers associated with the Affordable Dwellings and the land on which they are constructed.

6.5 Fallback AH Contribution

- 6.5.1 If either:
- (a) the offer to the Council made pursuant to 6.4.3(c) above is not accepted by the Council within 30 Working Days of the offer being received by the Council in writing; or

- (b) contracts have not been exchanged within six months of acceptance of the offer by the Council,
- (c) then the Covenantors Owner shall:
 - (i) be entitled to withdraw any outstanding offer or acceptance and/or withdraw from contractual negotiations (as applicable) with the Council in relation to the Affordable Dwellings; and
 - (ii) shall pay the Fallback AH Contribution to the Council in respect of the Affordable Dwellings that would otherwise have been provided.

6.5.2 On payment of the Fallback AH Contribution the Owner shall (in respect of the Affordable Dwellings that would otherwise have been provided):

- (a) be released from the provisions of this Schedule and shall be entitled to dispose of the relevant Affordable Dwellings on the open market; and
- (b) be taken as having discharged the requirement to provide the relevant Affordable Dwellings by the payment of the Fallback AH Contribution;

6.5.3 Where a Fallback AH Contribution is to be paid pursuant to paragraph 6.5.1 above then not earlier than 40 Working Days prior to the anticipated date of the Occupation of 80% of the Market Dwellings the Owner shall submit to the Council in writing for approval details of what the Fallback AH Contribution should be together with written evidence and copies of an independent valuation used to establish Market Value justifying the calculation of the said Fallback AH Contribution.

6.5.4 If the Owner have entered into one or more Affordable Housing Agreements / exchanged contracts with a Qualifying Purchaser (as applicable) for the Affordable Housing and has provided written evidence of the same to the Council in accordance with paragraph 6.2.1(a) or 6.4.3 as applicable no more than 60% of the Market Dwellings shall be Occupied until such time as the Affordable Dwellings have been completed and transferred either to the relevant Affordable Housing Providers in accordance with the terms of the Affordable Housing Agreements or to Qualifying Purchasers in accordance with the Discount Market Dwelling Scheme or Affordable Housing Scheme (as applicable).

6.5.5 If the Owner has been unable to enter into any Affordable Housing Agreements in respect of the Affordable Dwellings to be managed by an Affordable Housing Provider or to exchange contracts with a Qualifying Purchaser in respect of any Intermediate Dwellings not being managed by an Affordable Housing Provider then no more than 80% of the Market Dwellings shall be Occupied in a Reserved Matters Area until such time as one of the following has occurred:

- (a) all such Affordable Dwellings within a Reserved Matters Area have been constructed and completed such that they are capable of being Occupied and the Council has accepted an offer of the completed Affordable Dwellings made to it pursuant to paragraph 6.4.3(c); or
- (b) the Fallback AH Contribution for a Reserved Matters Area has been paid to the Council.

6.6 Occupation restrictions

6.6.1 Subject to the exemptions and releases in paragraphs 6.7 and 6.8 below:

- (a) the Owner shall not permit or otherwise allow any of the Affordable Dwellings to be Occupied otherwise than as the sole private residence of the Occupier and the Affordable Dwellings shall not be Occupied otherwise than as the sole private residence of the Occupier;

- (b) Social Rent Dwellings and Affordable Rent Dwellings (if any) shall not be used other than for Social Renting or Affordable Renting (as applicable);
- (c) Intermediate Dwellings to be managed by an Affordable Housing Provider (such as but not limited to Shared Ownership Dwellings) shall only be offered by the Affordable Housing Provider to each new occupier at a cost no more expensive than those approved by the Council in relation to the Intermediate Dwelling in question as part of the Affordable Housing Scheme (subject to provisions for staircasing applying to Shared Ownership Dwellings where appropriate) unless otherwise approved in writing by the Council;
- (d) Discount Market Dwellings (if any) shall not be Occupied other than by a Qualifying Purchaser as defined in the approved Discount Market Dwelling Scheme;
- (e) Private Intermediate Dwellings (if any) shall not be Occupied other than by a Qualifying Purchaser as defined in the approved Affordable Housing Scheme; and
- (f) Subletting of Affordable Dwellings is strictly prohibited without the Council's prior written consent (to be given in its absolute discretion),

PROVIDED THAT nothing in this Deed shall prevent any former joint owner spouse partner civil partner or other co-habitant from continuing to reside at the relevant Intermediate Dwelling after the Qualifying Purchaser ceases to reside there.

6.7 Mortgage release

6.7.1 The Affordable Housing provisions in Schedule 3 of this Deed shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the Affordable Housing provisions in this Deed which provisions shall determine.

6.8 Exemptions

6.8.1 The Owner covenant with the Council not to Occupy or permit to be Occupied the Affordable Dwellings within a Reserved Matters Area otherwise than in strict accordance with the restrictions and requirements in Schedule 3 **PROVIDED THAT** the provisions in Schedule 3 will only be binding on the applicable Affordable Dwellings until such time as:

- (a) any Chargee of an Affordable Dwelling or any part or parts thereof is in possession or has exercised a power of sale thereof as chargee and the procedure in paragraph 6.12 above has been followed (and the Affordable Dwellings have not been disposed of to an Affordable Housing Provider or to the Council);

- (b) any chargee of a share of a Shared Ownership Dwelling subject to a lease on shared ownership terms (as defined in section 70(4) Housing and Regeneration Act 2008) has exercised its powers as chargee under the lease;
- (c) any Shared Ownership Dwelling owner has (where permitted under the terms of the lease) staircased to own 100% of any lease of an Affordable Dwelling; or
- (d) an occupant of an Affordable Dwelling has exercised a statutory right to buy or acquire such Affordable Dwelling or has acquired such Affordable Dwelling pursuant to any voluntary purchase scheme approved by Homes England,

then in each case the provisions in Schedule 3 shall not bind or be enforceable and shall cease to have effect against such person or persons and against successors in title and any person or persons deriving title therefrom.

SCHEDULE 4

OPEN SPACE

1. DEFINITIONS

1.1 In this Schedule the following words and phrases shall have the meanings ascribed to them in addition to the definitions of the words and phrases set out in Clause 1 of this Deed:

"Completion Certificate"	means a certificate of practical completion issued by the Council
"Final Certificate"	means a certificate issued by the Council confirming that the Open Space Works to which the certificate relates have been maintained to its reasonable satisfaction during the Maintenance Period and any remedial works have been completed to the satisfaction of the Council
"Management Company"	means an incorporated body which has its principal office in England and whose primary objects permit it to maintain and manage the Open Space Works on the Open Space Land and any SUDS
"Management Scheme"	means one or more schemes for the management and ongoing maintenance of the Open Space Works and SUDS setting out the standard of maintenance, how members of the public will have unrestricted access to the Open Space Land subject to paragraph 3.5.2 of this Schedule, management responsibilities and financial arrangements for securing such responsibilities for the lifetime of the Development, taking into account necessary rights and reservations, public adoption of highways and any services and any other rights reasonably required by the proposed Management Company to fulfil its functions and to include full details of the identity of the proposed Management Company and how it is to be constituted and funded
"Maintenance Period"	means a period of 12 (twelve) months from the issue of the Completion Certificate
"Open Space Land"	means land to be provided within the Development for public open space to be provided in a location to be agreed in writing with the Council via the approved Open Space Scheme and which (for the avoidance of doubt) may incorporate SUDS
"Open Space Plan"	means the plan appended to this Deed at Appendix 2 and titled Land Use and Access Parameter Plan with drawing number SK-02 Rev G as may be amended from time to time
"Open Space Provision"	means the provision of public open space to be provided on the Open Space Land in accordance with the approved Open Space Scheme UNLESS otherwise agreed in writing with the Council
"Open Space Scheme"	means the scheme for the Open Space Land, substantially in accordance with the Open Space Plan, which for the avoidance of doubt shall be separate to

any landscaping scheme or any other scheme required to be submitted in accordance with a planning condition attached to the Planning Permission and will include (amongst other details) details of the final location(s) of the Open Space Provision including the nature, size and location of the SUDS boundary treatments and a proposed management and maintenance regime

"Open Space Transfer"

means the transfer by the Owner to the Parish Council or a Management Company of the unencumbered freehold interest in the Open Space Land or any part thereof on the following terms:

- (a) the Owner shall bear the other parties to the transfer's reasonable legal, professional and any SDLT costs of the transfer;
- (b) shall not include any terms which would restrict public access save for the purposes of maintenance or repair works, for health and safety reasons or in the case of emergency;
- (c) shall not include any terms which would directly or indirectly affect the construction servicing or occupation of the part of the Land that is retained by the Owner and shall include any rights necessary to facilitate the same;
- (d) shall include any reasonable reservation of rights of access and services over the Open Space Land for the benefit of any other part of the Land for the purpose of laying managing maintaining replacing renewing cleaning and repairing services;
- (e) shall include for the benefit of the Open Space Land the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the Open Space Land over any adjoining land for its intended purpose as set out in this Schedule;
- (f) shall be at nil consideration; and
- (g) subject to the considerations at (b) to (e) above, shall provide that the Open Space Land shall not be used for any purpose other than for a publicly accessible area for general recreational use

"Open Space Works"

means the works to provide the Open Space Provision on the Open Space Land in accordance with the approved Open Space Scheme

"RoSPA"

means the Royal Society for the Prevention of Accidents

"SUDS"

means sustainable urban drainage systems required in connection with the Development pursuant to the Planning Permission.

2. **OPEN SPACE SCHEME**

- 2.1 Commencement of Development of a Reserved Matters Area shall not take place until the Owner have submitted an Open Space Scheme for that Reserved Matters Area to the Council for approval and has received written approval of such scheme from the Council.
- 2.2 The Owner shall be permitted to seek to amend any approved Open Space Scheme for a Reserved Matters Area at any time following the Council's approval **SAVE THAT** in seeking to do so the Owner shall submit such amendments to the Council in writing for approval and obtain the Council's written approval to such amendments before such amendments may be implemented.

3. **LAYING OUT OF OPEN SPACE**

- 3.1 Prior to the Occupation of each Reserved Matters Area, the Covenantor shall lay out, install and complete the Open Space Works for the relevant Reserved Matters Area in accordance with the approved Open Space Scheme for the relevant Reserved Matters Area.
- 3.2 Following completion of the Open Space Works for each Reserved Matters Area:
- 3.2.1 the Covenantor shall serve notice on the Council inviting it to inspect the Open Space Works for the relevant Reserved Matters Area and to issue a Completion Certificate confirming that such Open Space Works for the relevant Reserved Matters Area have been completed to the Council's reasonable satisfaction and in accordance with the approved Open Space Scheme for the relevant Reserved Matters Area;
- 3.2.2 if the Council inspects the Open Space Works for the relevant Reserved Matters Area and notifies the Owner in writing of necessary remedial works on the basis the Open Space Works as constructed do not accord with the approved Open Space Scheme for the relevant Reserved Matters Area, the Owner shall complete such remedial works to the reasonable satisfaction of the Council; and
- 3.2.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting it to inspect the remedial works identified by it pursuant to paragraph 3.2.2 above and to issue a Completion Certificate confirming that such works have been completed to the Council's reasonable satisfaction in accordance with the approved Open Space Scheme for the relevant Reserved Matters Area

PROVIDED THAT

- (a) the inspection procedure identified in paragraphs 3.2.1, 3.2.2 and 3.2.3 shall be repeated until such time as the Council issues a Completion Certificate in relation to the Open Space Works for the relevant Reserved Matters Area; and
- (b) in respect of the SUDS, the Owner will provide to the Council prior to the inspection required by paragraph 3.2 above a RoSPA post-installation report and risk assessment satisfactory to the Council.
- 3.3 In the event of a dispute as to whether remedial works identified by the Council are necessary, the dispute may be referred to an Expert in accordance with Clause 16 of this Deed.
- 3.4 On the expiration of the Maintenance Period:
- 3.4.1 the Owner shall serve notice on the Council inviting it to inspect the Open Space Works for the relevant Reserved Matters Area and issue a Final Certificate confirming that such works have been maintained to the Council's reasonable satisfaction and in accordance with the approved Open Space Scheme for the relevant Reserved Matters Area;
- 3.4.2 if the Council inspects the Open Space Works for the relevant Reserved Matters Area and identifies necessary remedial works on the basis the Open Space Works as constructed and maintained do not accord with the approved Open Space Scheme for the relevant

Reserved Matters Area, the Owner shall complete such remedial works to the reasonable satisfaction of the Council; and

- 3.4.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting it to inspect the remedial works identified by it pursuant to paragraph 3.4.2 above and to issue a Final Certificate confirming that such works have been completed to the Council's reasonable satisfaction in accordance with the approved Open Space Scheme for the relevant Reserved Matters Area

PROVIDED THAT

- (a) the inspection procedure identified in paragraphs 3.2.1, 3.2.2 and 3.2.3 shall be repeated until such time as the Council issues a Final Certificate in relation to the Open Space Works for the relevant Reserved Matters Area; and
- (b) in respect of the SUDS, the Owner will provide to the Council prior to the inspection required by paragraph 3.4 above a RoSPA post-installation report and risk assessment satisfactory to the Council.

3.5 The Owner shall:

- 3.5.1 maintain the Open Space Works on a Reserved Matters Area in accordance with the approved Open Space Scheme for the relevant Reserved Matters Area in perpetuity or until the Open Space Provision is transferred to either the Parish Council or a Management Company following the Owner's notice under paragraph 4 below;

- 3.5.2 from the date a Completion Certificate is issued allow free unrestricted use of and access to that part of the Open Space Provision for the general public at all times of the day and night PROVIDED THAT the Owner may from time to time for a maximum of 25 days in a calendar year temporarily prevent or restrict access to the Open Space Land for any of the following reasons but only for so long as it is strictly necessary for the following purposes, and any closure of a duration in excess of four (4) Working Days shall first be approved in writing with the Council and signs shall be in place for five (5) Working Days prior to any closure to notify the public in advance of and during such closure and shall be removed promptly once the reason for such closure no longer applies:

- (a) closure for security;
- (b) for such minimum periods as may be necessary to prevent the creation of any public rights of way over the Open Space Land;
- (c) events (provided that the Council has approved closure for this purpose); and
- (d) the maintenance of the Open Space Land.

- 3.5.3 maintain a log of any temporary restrictions of access to the Open Space Land in accordance with paragraph 3.5.2 above and provide it to the Council without delay at their written request.

3.6 The Owner shall not transfer the Open Space Provision to a Management Company unless it has first complied with paragraph 4.1 below.

3.7 The Owner covenant with the Council that no RoSPA reports or risk assessments shall be more than eleven months old at the date they are provided to the Council.

4. TRANSFER OF OPEN SPACE

4.1 Prior to the issue of a Final Certificate for the Open Space Works the Owner shall offer in writing to transfer to the Open Space Provision to the Parish Council.

- 4.2 In the event the Parish Council confirms in writing to the Owner that it wishes to accept the offer of the transfer of the Open Space Provision (or any part of it) made pursuant to paragraph 4.1 above and therefore the Open Space Provision (or any part of it) is to be transferred to the Parish Council, then:
- 4.2.1 the Owner shall use reasonable endeavours to agree the reasonable terms for the transfer of the Open Space Provision (or any part of it) and to agree all of the provisions in detail of the Open Space Transfer within three months of the date of the notification by the Parish Council to the Owner that it wishes to accept the offer of the transfer;
 - 4.2.2 on agreement of the form of the Open Space Transfer, the Owner shall deliver to the Parish Council the Open Space Transfer executed by the Owner;
 - 4.2.3 the Open Space Transfer will take place as soon as practicably possible after the Completion Certificate has been issued in respect of the Open Space Provision (or the relevant part of it); and
 - 4.2.4 the Owner shall on completion of such Open Space Transfer pay to the Council (which shall be transferred to the Parish Council) a commuted sum for the management and maintenance of the Open Space Provision (or any part of it) to be agreed prior to the completion of the Open Space Transfer.
- 4.3 If the Parish Council confirms in writing to the Owner that it does not wish to accept the offer to transfer the Open Space Provision made by the Owner pursuant to paragraph 4.1 above or where the Parish Council has failed to respond to the Owner' offer pursuant to paragraph 4.1 above, after the expiry of 3 (three) months of the date of the Owner' offer pursuant to paragraph 4.1 or the issue of the Final Certificate (whichever is the later)), the Owner may transfer the Open Space Provision to a Management Company **PROVIDED THAT** such transfer shall be subject to paragraphs 4.4 and 4.5 below.
- 4.4 In the event that the Open Space Works (or any part of them) are transferred to a Management Company the Owner shall:
- 4.4.1 submit a Management Scheme for the Open Space Provision (or any part of it) to be transferred to the Management Company to the Council for its approval;
 - 4.4.2 upon receipt of the Council's written approval of the Management Scheme for the Open Space Provision (or any part of it) to be transferred to the Management Company, put into effect the approved Management Scheme and Open Space Transfer to secure the future maintenance of the Open Space Provision;
 - 4.4.3 make arrangements in the transfer (or other appropriate arrangements) of any part of the Development for the Management Company to receive adequate funding for the ongoing management maintenance of the Open Space Provision in accordance with the approved Management Scheme; and
 - 4.4.4 ensure that it has received written approval from the Council of the Management Scheme for the Open Space Provision (or any part of it) to be transferred to the Management Company and a Final Certificate(s) for the Open Space Provision (or any part of it) to be transferred to the Management Company prior to transferring the Open Space Provision (or any part of it) to the Management Company AND shall not transfer the Open Space Provision (or any part of it) to the Management Company in accordance with the Open Space Transfer until it has received written approval from the Council of the Management Scheme for the Open Space Provision (or any part of it) to be transferred to the Management Company and a Final Certificate for the Open Space Provision to be transferred to the Management Company.

- 4.5 If the Open Space Provision (or any part of it) is to be transferred to a Management Company pursuant to paragraph 4.4 above, then the Owner shall transfer the Open Space Provision to the Management Company in accordance with the Open Space Transfer subject to the following:
- 4.5.1 any rights of way, easements and other matters subsisting on the title to the Open Space Provision at the date of the transfer;
 - 4.5.2 a covenant on behalf of the Management Company that subject to any rights of way, easements and other matters referred to at paragraph 4.5.1 the Open Space Provision shall be used only for the purposes of recreation and play and access shall be allowed at all times to members of the public subject to health and safety considerations as set out in the approved Management Scheme; and
 - 4.5.3 a covenant on behalf of the Management Company to retain, manage and maintain the Open Space Provision transferred in perpetuity in accordance with the provisions of the approved Management Scheme.

SCHEDULE 5

SPORTS PROVISION

1. DEFINITIONS

1.1 In this Schedule the following words and phrases shall have the meanings ascribed to them in addition to the definitions of the words and phrases set out in Clause 1 of this Deed:

“Capital Replacement Fund” means £35,000 (Indexed) and paid in accordance with paragraph 4.10 - 4.11 of this Schedule and which is to be held in the Capital Replacement Fund Account for the purposes of undertaking reconstruction and/or replacement of the Sports Pitches

“Capital Maintenance Fund” means a fund of monies made up of 10 equal instalments of £1,200 (Indexed) and paid in accordance with paragraph 4.10 - 4.11 of this Schedule and which is to be held in the Capital Replacement Fund Account for the following purposes of undertaking capital maintenance to the Sports Pitches including but not limited to line repainting and lighting maintenance

“Community Use Agreement” means an agreement setting out the arrangements for use of the Sports Pitches by members of the general public setting out:

- a) members of the local community. local school groups and local sports organisations ('identified users') served by the Sports Pitches including any priority users;
- b) governance structure;
- c) duration/term;
- d) booking arrangements;
- e) fees/charging arrangements including arrangements to ensure that any fees to be charged and any fee reviews are reasonable;
- f) marketing/promotional protocol;
- g) opening hours;
- h) a minimum availability of 15 hours a week for use by the identified users;
- i) mechanism for monitoring use by identified users over time including provision of periodic surveys to the Council;
- j) mechanism for approving variations to agreed terms over time (including dispute resolution mechanism),

informed by and consistent with the Community Use Objectives

"Community Use Objectives"	<p>means:</p> <ul style="list-style-type: none"> a) providing new or enhanced opportunities for the local community, local school groups and local sports organisations to participate in sport and other forms of physical activity; b) increasing the number of people of all ages and abilities participating in sport and other physical activity including people with disabilities; and c) providing affordable (principally not for profit) and inclusive access to sports/recreation facilities
"Completion Certificate"	<p>means a certificate of practical completion issued by the Council</p>
"Construction Scheme"	<p>means a scheme providing details of the construction (shell and core specification) for the Sports Pitch</p>
"Final Certificate"	<p>means a certificate issued by the Council confirming that the Sports Pitches have been maintained to its reasonable satisfaction during the Maintenance Period and any remedial works have been completed to the satisfaction of the Council</p>
"Maintenance Period"	<p>means a period of 12 (twelve) months starting from the date that the Completion Certificate has been issued</p>
"Management and Maintenance Scheme"	<p>means a scheme for the ongoing management and maintenance of the Sports Pitches following its construction, setting out:</p> <ul style="list-style-type: none"> a) the standard of maintenance; b) the allocation of management responsibilities including identification of key individuals/persons/bodies; c) the funding and other financial arrangements for securing compliance with the identified management and maintenance responsibilities; and d) a commuted sum in an amount to be agreed to cover the costs of implementing the Management and Maintenance Scheme in the event the management responsibilities vest in the Parish Council or Council or the Parish Council's or Council's nominees
"Sports Management Company"	<p>means an incorporated body which has its principal office in England and whose primary objects permit it to maintain and manage the Sports Pitches and which:</p> <ul style="list-style-type: none"> a) shall be a private company limited by shares or guarantee (unless otherwise agreed with the Council); b) is funded so that it is able to undertake its management and maintenance duties in accordance with the Management and Maintenance

Scheme, and which shall be able to draw down monies from the Management Company Forward Funding Escrow Account;

- c) shall have a board which is able to accept a Council officer as a full voting member of the board if the Council so requests

which may be the same as the Management Company which administers the Open Space pursuant to Schedule 4

“Sports Management Company Maintenance Default Sum”

means the sum of £[TBC] (Indexed) to be available in the circumstances described at paragraph 4.20 of this Schedule

“Sports Management Company Maintenance Default Sum Account”

means a ringfenced part of the Council’s existing interest bearing bank account:

- a) to hold the Sports Management Company Maintenance Default Sum;
- b) within which monies can be drawn upon by the Council in the circumstances set out in paragraph 4.20 of this Schedule; and
- c) which shall be opened and closed in accordance with the provisions of this Schedule 5

“Sports Management Company Forward Funding Sum”

means the sum of £[TBC] (Indexed) to fund the operation of the Sports Pitches following its transfer to the Sports Management Company (as applicable)

“Sports Management Company Forward Funding Sum Escrow Account”

means an escrow account set up by the Owner:

- a) to contain the Sports Management Company Forward Funding Sum;
- b) within which monies can be drawn upon by the Sports Management Company towards the costs of the management and maintenance of the Sports Pitches; and
- c) which shall be opened and closed in accordance with the provisions of this Schedule

“Sports Pitches”

means the 2 tennis courts to be provided as part of the Development in accordance with the Planning Permission

“Sports Pitches Lighting Maintenance Contribution”

means the sum of £1,200 (Indexed) annually for a period of ten years and paid in accordance with paragraph 4.10 - 4.11 of this Schedule for the following purposes of undertaking maintenance of the floodlighting at the Sports Pitches

“Sports Pitches Transfer”

means the transfer by the Owner to the Parish Council or Council or to a Sports Management Company of the

unencumbered freehold interest in the land on which the Sports Pitches are located on the following terms:

- (a) the Owner shall bear the other parties to the transfer's reasonable legal, professional and any SDLT costs of the transfer;
- (b) shall not include any terms which would restrict public access save for the purposes of maintenance or repair works, for health and safety reasons or in the case of emergency;
- (c) shall not include any terms which would directly or indirectly affect the construction servicing or occupation of the part of the Site that is retained by the Owner and shall include any rights necessary to facilitate the same;
- (d) shall include any reasonable reservation of rights of access and services over the land for the benefit of any other part of the Site for the purpose of laying managing maintaining replacing renewing cleaning and repairing services;
- (e) shall include for the benefit of the land the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the land over any adjoining land for its intended purpose as set out in this Schedule;
- (f) shall be at nil consideration; and
- (g) subject to the considerations at (b) to (e) above, shall provide that the land shall not be used for any purpose other than for a publicly accessible area for general recreational use.

2. **SPORTS PITCHES DETAILS**

- 2.1 The Owner covenant with the Council that it shall not Commence Development unless and until the Owner have submitted to the Council the following draft documents for its written approval:
 - 2.1.1 the Construction Scheme; and
 - 2.1.2 the Management and Maintenance Scheme.
- 2.2 The Owner covenant with the Council that the Sports Pitches shall not be Commenced until and unless the Council has approved the Construction Scheme in writing.
- 2.3 The Owner covenant with the Council that the Sports Pitches shall not be opened for use unless and until the Council has approved the Management and Maintenance Scheme in writing.
- 2.4 OwnerThe Owner covenant with the Council to implement the Management and Maintenance Scheme in accordance with the approved details.

3. **LAYING OUT OF THE SPORTS PITCHES**

3.1 Prior to the first Occupation of the Development, the Owner shall lay out, install, complete and make available for use the Sports Pitches in accordance with the approved Construction Scheme and notify the Council accordingly.

3.2 Following completion of the Sports Pitches:

3.2.1 the Owner shall serve notice on the Council inviting it to inspect the Sports Pitches and to issue a Completion Certificate confirming that such Sports Pitches have been completed to the Council's reasonable satisfaction and in accordance with the approved Construction Scheme;

3.2.2 if the Council inspects the Sports Pitches and notifies the Owner in writing of necessary remedial works on the basis the Sports Pitches as constructed do not accord with the approved Construction Scheme, the Owner shall complete such remedial works in the required timescale notified by the Council to the reasonable satisfaction of the Council; and

3.2.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting it to inspect the remedial works identified by it pursuant to paragraph 3.2.2 above and to issue a Completion Certificate confirming that such works have been completed to the Council's reasonable satisfaction in accordance with the approved Construction Scheme

PROVIDED THAT the inspection procedure identified in paragraphs 3.2.1 and 3.2.3 shall be repeated until such time as the Council issues a Completion Certificate in relation to the Sports Pitches.

3.3 In the event of a dispute as to whether remedial works identified by the Council are necessary, the dispute may be referred to an Expert in accordance with Clause 15.2 of this Deed.

3.4 On the expiration of the Maintenance Period:

3.4.1 the Owner shall serve notice on the Council inviting it to inspect the Sports Pitches and issue a Final Certificate confirming that such works have been maintained to the Council's reasonable satisfaction and in accordance with the approved Construction Scheme;

3.4.2 if the Council inspects the Sports Pitches and identifies necessary remedial works on the basis the Sports Pitches as constructed and maintained do not accord with the approved Construction Scheme, the Owner shall complete such remedial works to the reasonable satisfaction of the Council; and

3.4.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting it to inspect the remedial works identified by it pursuant to paragraph 3.4.2 above and to issue a Final Certificate confirming that such works have been completed to the Council's reasonable satisfaction in accordance with the approved Construction Scheme

PROVIDED THAT the inspection procedure identified in paragraphs 3.4.1 and 3.4.3 shall be repeated until such time as the Council issues a Final Certificate in relation to the Sports Pitches.

3.5 The Owner shall:

3.5.1 maintain the Sports Pitches in accordance with the approved Management and Maintenance Scheme until the Sports Pitches are transferred to the Parish Council, Council or to a Management Company pursuant to paragraph 4 below; and

3.5.2 allow free unrestricted use of and access to the Sports Pitches for the general public at all reasonable times of the day and night.

4. **TRANSFER OF SPORTS PITCHES**

- 4.1 Prior to the issue of a Final Certificate for the Sports Pitches the Owner shall offer in writing to transfer to the Sports Pitches to the Parish Council.
- 4.2 In the event the Parish Council confirms in writing to the Owner that it wishes to accept the offer of the transfer of the Sports Pitches made pursuant to paragraph 4.1 above and therefore the Sports Pitches are to be transferred to the Parish Council, then:
- 4.2.1 the Owner shall use reasonable endeavours to agree the reasonable terms for the transfer of the Sports Pitches and to agree all of the provisions in detail of the Sports Pitches Transfer within three months of the date of the notification by the Parish Council to the Owner that it wishes to accept the offer of the transfer;
 - 4.2.2 on agreement of the form of the Sports Pitches Transfer, the Owner shall deliver to the Parish Council the Sports Pitches Transfer executed by the Owner;
 - 4.2.3 the Sports Pitches Transfer will take place as soon as practicably possible after the Final Certificate has been issued in respect of the Sports Pitches; and
 - 4.2.4 the Owner shall on completion of such Sports Pitches Transfer pay to the Council (which shall be transferred to the Parish Council) a commuted sum for the management and maintenance of the Sports Pitches to be agreed prior to the completion of the Sports Pitches Transfer; and
 - 4.2.5 paragraphs 4.10 to 4.13 of this Schedule shall apply.
- 4.3 If the Parish Council confirms in writing to the Owner that it does not wish to accept the offer to transfer the Sports Pitches made by the Owner pursuant to paragraph 4.1 above or where the Parish Council has failed to respond to the Owner' offer pursuant to paragraph 4.1 above, after the expiry of 3 (three) months of the date of the Owner' offer pursuant to paragraph 4.1 or the issue of the Final Certificate (whichever is the later)), the Owner shall offer in writing to transfer the Sports Pitches to the Council.
- 4.4 In the event the Council confirms in writing to the Owner that it wishes to accept the offer of the transfer of the Sports Pitches made pursuant to paragraph 4.3 above and therefore the Sports Pitches are to be transferred to the Council, then:
- 4.4.1 the Owner and the Council shall use reasonable endeavours to agree the reasonable terms for the transfer of the Sports Pitches and to agree all of the provisions in detail of the Sports Pitches Transfer within three months of the date of the notification by the Council to the Owner that it wishes to accept the offer of the transfer;
 - 4.4.2 on agreement of the form of the Sports Pitches Transfer, the Owner shall deliver to the Council the Sports Pitches Transfer executed by the Owner;
 - 4.4.3 on delivery of the executed Sports Pitches Transfer by the Owner, the Council shall execute and complete the Sports Pitches Transfer provided that they shall not be required to execute and complete the Sports Pitches Transfer until a Final Certificate for the Sports Pitches has been issued;
 - 4.4.4 the Sports Pitches Transfer will take place as soon as practicably possible after the Final Certificate has been issued in respect of the Sports Pitches;
 - 4.4.5 the Owner shall on completion of such Sports Pitches Transfer pay to the Council a commuted sum for the management and maintenance of the Sports Pitches to be agreed prior to the completion of the Sports Pitches Transfer; and
 - 4.4.6 paragraphs 4.10 to 4.13 of this Schedule shall apply.
- 4.5 If the Council confirms in writing to the Owner that it does not wish to accept the offer to transfer the Sports Pitches made by the Owner pursuant to paragraph 4.3 above or where the Parish Council has failed to respond to the Owner' offer pursuant to paragraph 4.3 above, after the expiry of 3 (three)

months of the date of the Owner' offer pursuant to paragraph 4.3 or the issue of the Final Certificate (whichever is the later)), the Owner may transfer the Sports Pitches to a Sports Management Company **PROVIDED THAT** such transfer shall be subject to paragraph 4.6 below and thereafter paragraphs 4.7 - 4.20 of this Schedule shall apply.

4.6 Prior to the transfer of the Sports Pitches to a Sports Management Company:

4.6.1 a Final Certificate for the Sports Pitches must have been issued;

4.6.2 the Sports Management Company must have been approved by the Council and incorporated;

4.6.3 the Community Use Agreement must have been approved by the Council and the Sports Management Company and the Council (or the Council's nominee, as applicable) have entered into the approved Community Use Agreement;

4.6.4 the Owner must have set up the Sports Management Company Forward Funding Sum Escrow Account and provided evidence to the Council that the account has been set up and the Sports Management Company Forward Funding Sum deposited;

4.6.5 the Council must have received the first instalment of the Capital Replacement Fund;

4.6.6 the Council must have received the Sports Management Company Maintenance Default Sum.

Sports Management Company Forward Funding Sum

4.7 The Sports Management Company Forward Funding Sum Escrow Account shall be retained for a period expiring 10 (ten) years after the date of the transfer of the Sports Pitches to the Sports Management Company.

4.8 During the period of 10 (ten) years referred to in paragraph 4.7 the Sports Management Company may if it considers it necessary draw down monies from the Sports Management Company Forward Funding Escrow Account in order to allow it to meet its obligations under the Management and Maintenance Scheme and the Community Use Agreement.

4.9 The Management Company Forward Funding Sum Escrow Account shall be closed 10 (ten) years after the date of the transfer of the Sports Pitches to the Sports Management Company and any monies whether capital or interest sums remaining in either account shall be released to the Sports Management Company to be used towards the ongoing management of the Sports Pitches.

Capital Replacement Fund

4.10 The Owner shall pay the Capital Replacement Fund and the first instalment of the Capital Maintenance Fund and the Sports Pitches Lighting Maintenance Contribution to the Council upon issue of the Completion Certificate in relation to the Sports Pitches pursuant to paragraph 3.2 above.

4.11 On the first anniversary of payment to the Council of the first instalment of the Capital Maintenance Fund and the Sports Pitches Lighting Maintenance Contribution pursuant to paragraph 4.10 above the Owner shall pay the second instalment of the Capital Maintenance Fund and the Sports Pitches Lighting Maintenance Contribution to the Council and an instalment for each anniversary thereafter until all ten instalments have been paid to the Council.

4.12 The Capital Replacement Fund and Capital Maintenance Fund shall be held by the Council until 18 (eighteen) months have passed after the tenth anniversary of the date of the transfer of the Sport Pitches to the Parish Council, Council or Sports Management Company and during the time it is open the person who is operating the Sports Pitches (whether that is the Sports Management Company or any other third party approved to do so) that person may if so needed and subject to giving the Council 10 (ten) Working Days' notice draw down monies for the purposes specified in the definition of Capital Replacement Fund or Capital Maintenance Fund (as applicable).

- 4.13 Once the period in paragraph 4.12 has expired, the Council shall return any remaining part of the Capital Replacement Fund or Capital Maintenance Fund monies whether capital or interest sums to the Owner (being for the purpose of this paragraph the person that made the payment of the Capital Replacement Fund or Capital Maintenance Fund (as applicable)).

Sports Management Company Maintenance Default Sum

- 4.14 The Owner shall pay the Sports Management Company Maintenance Default Sum to the Council upon the issue of the Completion Certificate in relation to the Sports Pitches pursuant to paragraph 3.2 above.
- 4.15 The Sports Management Company Maintenance Default Sum shall be held by the Council until 18 (eighteen) months have passed after the tenth anniversary of the date of the transfer of the Sports Pitches to the Sports Management Company and unless and until the circumstances of paragraph 4.20 have occurred then on each anniversary of the payment of the Sports Management Company Maintenance Default Sum to the Council shall return to the Owner the sum of £[TBC] pounds **PROVIDED THAT** no payment is to be returned to the Owner on the first anniversary and repayments will only be made from the second anniversary onwards.
- 4.16 During the time the Sports Management Company Maintenance Default Sum is being held the monies shall be available to be drawn upon by the Council in the event the circumstances of paragraph 4.20 apply and in such amounts as the Council sees fit.
- 4.17 Once the period in paragraph 4.15 has expired, the Council shall return any remaining part of the Sports Management Company Maintenance Default Sum monies whether capital or interest sums to the Owner (being for the purpose of this paragraph the person that made the payment of the Sports Management Company Maintenance Default Sum).
- 4.18 The Sports Management Company shall at the end of its first year be obligated to employ certified auditors to assess the performance of the Sports Management Company in terms of its financial performance and to review its annual statement of accounts and the Sports Management Company shall submit the auditor's report to the Council.
- 4.19 If the Sports Pitches are to be transferred to a Management Company pursuant to paragraph 4.3 above, then the Owner shall transfer the Sports Pitches to the Sports Management Company subject to the following:
- 4.19.1 any rights of way, easements and other matters subsisting on the title to the Sports Pitches at the date of the transfer;
- 4.19.2 a covenant on behalf of the Sports Management Company that subject to any rights of way, easements and other matters referred to at paragraph 4.4.1 the Sports Pitch shall be used only for the purposes of recreation and play and access shall be allowed at all times to members of the public subject to health and safety considerations as set out in the approved Management and Maintenance Scheme and the Community Use Agreement; and
- 4.19.3 a covenant on behalf of the Sports Management Company to retain, manage and maintain the Sports Pitches transferred in perpetuity in accordance with the provisions of the approved Management and Maintenance Scheme and Community Use Agreement.
- 4.20 In the event the Sports Management Company fails to act in accordance with the Management and Maintenance Scheme and/or the Community Use Agreement or the Sports Management Company becomes insolvent or otherwise ceases to exist then the Council may (at its discretion) enter onto the Site together with any relevant personnel or equipment to ensure the performance of the Community Use Agreement and/or the Management and Maintenance Scheme and/or carry out any works it considers reasonably necessary to maintain or make good any defect or damage and the Council shall be entitled to full reimbursement by the Sports Management Company of all costs and expenses in performing the said obligations. In the event the Sports Management Company does not have adequate funds to cover these works in default or ceases to exist the Council shall be entitled to recover such expenses and costs from the Sports Management Company Maintenance

Default Sum Account and/or the Capital Replacement Fund Account (as appropriate) subject to giving written notice of not less than 11 (eleven) Working Days to the Sports Management Company stating the nature of the breach **PROVIDED THAT** such notice is not required to be given if the Sports Management Company has ceased to exist.

SCHEDULE 6

COUNCIL AND COUNTY COUNCIL COVENANTS

1. The Council covenants with the Owner as follows:
 - 1.1 to comply with each obligation, covenant and undertaking on the part of the Council contained in this Deed (as applicable);
 - 1.2 not to use or apply the Contributions other than for the purposes for which the Contributions are paid, as specified in this Deed; and
 - 1.3 that if any, all or any part of the Contributions paid to the Council (including any interest earned) have not been expended or committed for expenditure on the day 10 (ten) years after the day on which the relevant payment was received or on the date the Deed ends (whichever is the earlier), the Council or County Council (as applicable) shall repay the unspent portion to the party that made the relevant Contribution together with any interest at the base lending rate of Lloyds Bank plc accrued from the date of payment to the date of repayment.

2. The County Council covenants with the Owner as follows:
 - 2.1 to comply with each obligation, covenant and undertaking on the part of the County Council contained in this Deed (as applicable);
 - 2.2 not to use or apply the Contributions other than for the purposes for which the Contributions are paid, as specified in this Deed or for such other purposes for the benefit of the Development as the Owner and the County Council shall agree in writing both parties acting reasonably; and
 - 2.3 that if any, all or any part of the Contributions paid to the County Council (including any interest earned) have not been expended or committed for expenditure on the day 10 (ten) years after the day on which the relevant payment was received or on the date the Deed ends (whichever is the earlier), the County Council (as applicable) shall repay the unspent portion to the party that made the relevant Contribution together with any interest at the base lending rate of Lloyds Bank plc accrued from the date of payment to the date of repayment PROVIDED THAT such written request shall only be made within one (1) year commencing from the date of expiry of the aforementioned ten (10) year period and in the event of no written request being made within such period any unexpended sum together with accrued interest shall be released free of any liability and obligations to the County Council PROVIDED THAT the County Council shall apply any unexpended sum only to a suitable provision serving the Development and in full compliance with Regulation 122 of the CIL Regulations 2010.

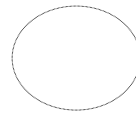
Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of **RUGBY BOROUGH COUNCIL** in the presence of

.....
Full Name (Director)

.....
Signature of Director

.....
Full Name (Director/Secretary)

.....
Signature of Director/Secretary



Common Seal

THE COMMON SEAL of)
THE WARWICKSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

Designated Officer

.....
Signature

.....
Name

Executed as a Deed (but not delivered until the date of this Deed) by **RICHBOROUGH ESTATES LIMITED** acting by

.....
Full Name (Director)

.....
Signature of Director

.....
Full Name (Director/Secretary)

.....
Signature of Director/Secretary

Executed as a deed by **IAN
JAMES ALLEN** in the presence
of:

.....

Signature

.....

Signature of witness

.....

Name of witness

.....

.....

.....
Address of witness



APPENDIX 1

PLAN

APPENDIX 2
OPEN SPACE PLAN