

DATED

17<sup>th</sup> October

2022

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- (1) MALVERN HILLS DISTRICT COUNCIL
- (2) WYCHAVON DISTRICT COUNCIL
- (3) WORCESTER CITY COUNCIL
- (4) WORCESTERSHIRE COUNTY COUNCIL
- (5) WELBECK STRATEGIC LAND (WORCESTER) LLP
- (6) MISTERS BROS LIMITED
- (7) DANIEL WALTER ALDERSEY, CHARLOTTE  
LOUISE ALDERSEY, KAREN JAYNE ALDERSEY,  
and REBECCA WIDDOWSON
- (8) MARTIN ARMSDEN THOMAS, and ANTHONY  
NIMROD CHAMPION
- (9) COLIN ROBERT ANSTEY and JANE ROZANNE  
ANSTEY
- (10) GRACE MARIA JONES
- (11) PRUDENCE LILIAN MARGARET SMEETON
- (12) CHARLES PETER RANDALL
- (13) SALLY ELIZABETH KING and JAMES ALEXANDER  
KING
- (14) MATTHEW JOHN BRERETON
- (15) MARGARET ANN DOVEY, SALLY ANN MORRALL,  
and ALISON LOIS DOVEY
- (16) KERRY RUFF

**(17) DAVID FRANK SMITH**

**(18) WELBECK STRATEGIC LAND LLP**

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**SECTION 106 AGREEMENT**

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Under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to land to the South of the City of Worcester, Bath Road, Broomhall, Worcester, Worcestershire

**M Patel  
Director of Legal and Governance  
Malvern Hills District Council.  
Council House  
Avenue Road  
Malvern  
Worcestershire  
WR14 3AF**

Ref no 13/00656/OUT

THIS DEED is made the 17<sup>th</sup> day of October Two Thousand and Twenty-Two

**BETWEEN:**

- (1) **MALVERN HILLS DISTRICT COUNCIL** of Council House, Avenue Road, Malvern, Worcestershire WR14 3AF ("**the District Council**") of the first part
- (2) **WYCHAVON DISTRICT COUNCIL** of The Civic Centre, Queen Elizabeth Drive, Pershore, Worcestershire, WR10 1PT ("**Wychavon District Council**") of the second part
- (3) **WORCESTER CITY COUNCIL** of The Guildhall, High Street, Worcester, WR1 2EY ("**the City Council**") of the third part
- (4) **WORCESTERSHIRE COUNTY COUNCIL** of County Hall, Spetchley Road, Worcester, Worcestershire WR5 2NP ("**the County Council**") of the fourth part
- (5) **WELBECK STRATEGIC LAND (WORCESTER) LLP** (LLP Registration No: OC359791) whose registered office is at Woodstock Studios, 13 Woodstock Street, London, W1C 2AG ("**the First Owner**") of the fifth part
- (6) **MISTERS BROS LIMITED** Company Registration Number: 02861878) whose registered office is 2 Eden Court Bath Road Worcester WR5 3DL ("**the Second Owner**") of the sixth part
- (7) **DANIEL WALTER ALDERSEY** of [REDACTED]  
[REDACTED] **CHARLOTTE LOUISE ALDERSEY** of [REDACTED]  
[REDACTED], **KAREN JAYNE ALDERSEY** of [REDACTED]  
[REDACTED] and **REBECCA WIDDOWSON**  
care of [REDACTED] (together  
"**the Third Owner**") of the seventh part
- (8) **MARTIN ARMSDEN THOMAS** care of [REDACTED]  
[REDACTED] and **ANTHONY NIMROD CHAMPION** care of [REDACTED]  
[REDACTED] (together "**the Fourth Owner**") of the eighth part
- (9) **COLIN ROBERT ANSTEY** of [REDACTED]  
[REDACTED] **JANE ROZANNE ANSTEY** of [REDACTED]  
[REDACTED] (together "**the Fifth Owner**") of the ninth part
- (10) **GRACE MARIA JONES** of [REDACTED] ("**the Sixth Owner**") of the tenth part

- (11) **PRUDENCE LILIAN MARGARET SMEETON** of [REDACTED]  
[REDACTED] ("the Seventh Owner") of the eleventh part
- (12) **CHARLES PETER RANDALL** of [REDACTED]  
[REDACTED] ("the Eighth Owner") of the twelfth part
- (13) **SALLY ELIZABETH KING** and **JAMES ALEXANDER KING** both of [REDACTED]  
[REDACTED] (together "the Ninth Owner") of the thirteenth part
- (14) **MATTHEW JOHN BRERETON** of [REDACTED]  
[REDACTED] ("the Tenth Owner") of the fourteenth part
- (15) **MARGARET ANN DOVEY, SALLY ANN MORRALL, and ALISON LOIS DOVEY** of [REDACTED]  
[REDACTED] (together "the Eleventh Owner") of the fifteenth part
- (16) **KERRY RUFF** of [REDACTED] ("the Twelfth Owner") of  
the sixteenth part
- (17) **DAVID FRANK SMITH** of [REDACTED]  
("the Thirteenth Owner") of the seventeenth part
- (18) **WELBECK STRATEGIC LAND LLP** (LLP Registration No: OC359671) whose registered  
office is at Woodstock Studios, 13 Woodstock Street, London, W1C 2AG ("the Chargee") of  
the eighteenth part

## RECITALS

### 1. DEFINITIONS

Wherever the context so permits in this Deed the following shall have the following meanings:

<b>"the 1990 Act"</b>	means the Town and Country Planning Act 1990 (as amended)
<b>"Additional First Homes Contribution"</b>	means in circumstances where a FH Disposal of a First Homes Unit other than as a First Home has taken place in accordance with paragraphs 2.8, 2.9 or 4 of Part 1B of the First Schedule of this Deed the lower of the following two amounts:  a) 30% of the proceeds of sale; and  b) the proceeds of sale less the amount due and outstanding to any FH Mortgagee of the relevant



	<p>First Homes Unit under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the FH Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Homes Unit</p> <p>and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the FH Disposal of the First Homes Unit other than as a First Home</p>
<b>"Affordable Housing"</b>	<p>means housing of a kind which (having regard to its rent or other consideration) is suitable for occupation by people who are in need of such housing because of their limited means and who are unable to access private rented/owner occupier accommodation on the open market at a cost low enough for them to afford determined with regard to local incomes and local house prices as more particularly defined within the National Planning Policy Framework and shall comprise Social Rented Units and Intermediate Housing Units and First Homes or such other tenure as is agreed with the District Council in the Affordable Housing Scheme for any Phase (such agreement to be in the District Council's absolute discretion)</p>
<b>"Affordable Housing Dwellings"</b>	<p>means 20% (twenty percent) of the Dwellings (rounded up to the nearest whole number) and their plots and allocated parking spaces/garages to be constructed upon the Land and provided as Affordable Housing in the following tenure:</p> <ul style="list-style-type: none"> <li>(i) 70% to be Social Rented Units</li> <li>(ii) 25% to be First Home Units and</li> <li>(iii) 5% to be Intermediate Housing Units</li> </ul> <p>in accordance with the provisions of the Affordable Housing Scheme and Schedule 1 to this Deed</p> <p>or such other tenure as is agreed in writing by the District Council (such agreement to be in the District Council's absolute discretion save that such agreement shall not be given unless and until the same is approved by the City Council) in the Affordable Housing Scheme such Dwellings</p>

	to be provided in accordance with the provisions of the Affordable Housing Scheme and Schedule 1 to this Deed.
<b>"Affordable Housing Phasing Plan"</b>	means a plan to be submitted to the District Council in writing for approval in accordance with the provisions of Schedule 1 prior to Commencement of Development setting out how the Affordable Housing Dwellings are provided within each Phase to provide for a minimum of 20% of the Dwellings across the Development to be provided as Affordable Housing Dwellings such approval to be within the District Council's absolute discretion (save that such approval shall not be given unless and until the same is approved by the City Council) or such amendments to the plan as are agreed by the District Council in writing
<b>"Affordable Housing Plan"</b>	means a plan showing the layout size integration and tenures of the Affordable Housing Dwellings for a Phase to be provided in accordance with the provisions of Schedule 1 within the Affordable Housing Scheme for that Phase
<b>"Affordable Housing Scheme"</b>	<p>means a scheme including the Affordable Housing Plan to be submitted to the District Council in writing for approval prior to Commencement of Development (such approval not to be given until the same is approved by the City Council) on each Phase setting out the number, location, size, tenure, specification and timing of the Affordable Housing Dwellings to be constructed on the Land within that Phase such scheme to be in accordance with the definition of Affordable Housing and the provisions of Schedule 1 which shall include unless otherwise agreed in writing by the District Council (such agreement to be in the District Council's absolute discretion save that such agreement shall not be given unless and until the same is approved by the City Council):-</p> <ul style="list-style-type: none"> <li>(i) 70% Social Rented Units;</li> <li>(ii) 25% First Home Units; and</li> <li>(iii) 5% Intermediate Housing Units</li> </ul>
<b>"Agreed Purposes"</b>	<p>means the use of the Healthcare Contribution towards the cost of acquiring the Healthcare Accommodation and installing necessary services and built facilities, and / or the extension, expansion, and / or enhancement of the following surgeries within Worcester and serving the Development</p> <ul style="list-style-type: none"> <li>• Severn Valley Medical Practice</li> </ul>

	<ul style="list-style-type: none"> <li>• Spring Gardens Group Medical Practice</li> <li>• Barbourne Health Centre</li> <li>• Farrier House Surgery</li> <li>• Albany House Surgery</li> <li>• Elbury Moor Medical Centre</li> <li>• Thornloe Lodge Surgery</li> <li>• Haresfield House Surgery</li> <li>• St Martins Gate Surgery</li> <li>• St John's House Surgery</li> </ul> <p>PROVIDED THAT if the NHS Property Services (or any successor body) cannot demonstrate to the reasonable satisfaction of the District Council that the Healthcare Contribution has or will be expended or committed for healthcare provision serving the Development within the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) within five (5) years of the Occupation of the 900<sup>th</sup> Dwelling the Healthcare Contribution or such part thereof which has not been expended or committed shall be used by the District Council for the provision of Affordable Housing within the district of Malvern Hills</p>
<b>"Agricultural Parcel"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>- any part of the Land which is not within a Phase; or</li> <li>- any part of the Land within a Phase: <ul style="list-style-type: none"> <li>(a) on which Development has not been Commenced; AND</li> <li>(b) for which the use prior to the grant of the Planning Permission and the approval pursuant to the relevant Reserved Matters Application was Agricultural Use; AND</li> <li>(c) either: (i) remains in such Agricultural Use; or (ii) is no longer in such Agricultural Use but is still owned by either the same owner as at the date of this Deed or a successor in title by way of inheritance only to such owner</li> </ul> </li> </ul>
<b>"Agricultural Use"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>• agricultural use as defined in Section 336(1) of the 1990 Act;</li> </ul>

	<ul style="list-style-type: none"> <li>equestrian-related use, including stables, livery yards and grazing for horses, donkeys, ponies and similar; and</li> <li>woodland and forest</li> </ul>
<b>"the Application"</b>	means the outline planning application for the Development made to and registered by the Council on 7 <sup>th</sup> June 2013 under District Council Reference No. 13/00656/OUT, together with the outline planning application made to the City Council and registered under City Council Reference No. P16L0488 (formerly P13L0316), and the outline planning application made to Wychavon District Council and registered under Wychavon District Council Reference No. 13/00656/OUT
<b>"Armed Services Member"</b>	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Homes Unit, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
<b>"Building Contract"</b>	means a building contract for each of the construction of the Sports Pavilion and the Middle Broomhall Farm Works which shall be based upon the JCT Design and Build Contract as amended by a schedule of amendments as approved by the District Council and the Management Organisation or other form of building contract that the District Council shall approve (such approval not to be unreasonably withheld or delayed)
<b>"Building Contractor"</b>	means such reputable contractor as may be appointed as the building contractor or replacement building contractor for the time being by the Owner, with the approval of the District Council and the Management Organisation of each of the Sports Pavilion Works and the Middle Broomhall Farm Works
<b>"CDM Regulations"</b>	means the Construction (Design and Management) Regulations 2015
<b>"the City Council"</b>	means Worcester City Council or any successor to its statutory functions

<b>"the City Council Allocations"</b>	means those Affordable Housing Dwellings to be allocated by the City Council in accordance with the Local Lettings Plan and the Housing Accord
<b>"Cluster"</b>	shall mean a group of Affordable Housing Dwellings which does not have contiguous boundaries with another group of Affordable Housing Dwellings
<b>"Collateral Warranty"</b>	means a deed of collateral warranty in the relevant form appended at Appendix 7 with such amendments as the Owner may (subject to the approval of the District Council and the Management Organisation which is not to be unreasonably withheld or delayed) require
<b>"Commencement of Development"</b>	means the carrying out of any act pursuant to the Planning Permission which constitutes a material operation as defined by Sections 56 (4) and 93 of the 1990 Act other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance (other than demolition), archaeological excavations, investigations for the purposes of assessing ground conditions, remedial work in respect of contamination or other adverse ground conditions, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
<b>"Community Facilities"</b>	<p>means facilities at Middle Broomhall Farm, and facilities including a village square, meeting space, any part of the Local Centre for which the Management Organisation owns or operates, the On Site Public Open Space (including the Sports Pavilion), the SUDS and the following strategic green infrastructure areas as identified in the Application:</p> <ul style="list-style-type: none"> <li>- Norton and Crookbarrow Gateway;</li> <li>- Clerkenleap Park;</li> <li>- Broomhall Farms Greenway;</li> <li>- Crookbarrow Woodland Link; and</li> <li>- playing fields and tennis courts at Norton Fields</li> </ul> <p>and as shown indicatively and for the purposes of identification only on Plan 2</p>
<b>"Community Facilities Management Plan"</b>	means a plan for the effective management and maintenance of the Community Facilities and any other assets owned or managed by the Management

	<p>Organisation in perpetuity by the Management Organisation, such plan to include:</p> <ul style="list-style-type: none"> <li>- Details of the assets to be transferred to the Management Organisation, including as a minimum the Community Facilities and the timings for transfer of each of the assets;</li> <li>- The funding arrangements for the maintenance of the Community Facilities which shall be consistent with Management Organisation Management Plan; and</li> <li>- The principles to be applied to the maintenance and management of the Community Facilities</li> </ul> <p>or any revision thereof approved from time to time by the District Council in writing</p>
<b>"Community Facilities Purposes"</b>	means the maintenance and management of the Community Facilities in perpetuity to the extent identified in the Community Facilities Management Plan approved by the District Council in writing in accordance with the provisions of Schedule 4 to this Deed
<b>"Community Purpose Works"</b>	means the Sports Pavilion Works and the Middle Broomhall Farm Works
<b>"Community Use Agreement"</b>	means an agreement entered into between the provider of the proposed primary school on the Primary School Site and the District Council binding the Primary School Site which ensures the community use of the specified built facilities and outdoor play areas provided on the Primary School Site at times to be agreed such community use to be provided in perpetuity (unless otherwise agreed by the District Council)
<b>"Completed"</b>	<p>means practical completion of the construction of any Dwelling or Dwellings which shall be deemed to have occurred upon the first of the following to occur;</p> <p>(i) the issue of a cover note by the National House Building Council (NHBC) or equivalent issued by any other reputable warranty provider in respect of such Dwelling or Dwellings or in the alternative</p> <p>(ii) when the District Council's building control consultancy or an approved inspector has certified that such Dwelling</p>

	<p>or Dwellings are practically complete or has issued a building control inspection certificate</p> <p>And "Completion" shall be construed accordingly</p>
<b>"Compliance Certificate"</b>	means the certificate issued by the District Council, Wychavon District Council, or the City Council (as appropriate) confirming that a First Homes Unit is being FH Disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 2.2 of Part 1B of the First Schedule applies the Eligibility Criteria (Local)
<b>"Council's Variation"</b>	means any works requested by the District Council additional to or in modification of the Community Purpose Works.
<b>"the County Council"</b>	means Worcestershire County Council or any successor to its statutory functions
<b>"Defects Liability Period"</b>	the defects liability period or rectification period for the making good of defects, shrinkages or other faults in the Community Purpose Works under each of the Building Contracts.
<b>"Design Sub-Contractors"</b>	means all sub-contractors of each of the Building Contractors having a material design responsibility in relation to the Community Purpose Works being carried out under the Building Contracts
<b>"the Development"</b>	the development of the Land for a mixed-use development with local centre including demolition of existing buildings and the construction of up to 2204 dwellings including affordable housing (use class C3) and up to 14ha of employment land, and hotel (use class C1), elderly persons accommodation (use class C2), business (use classes E, B2, and B8), retail, financial and professional services, café and restaurant (use class E) pub and drinking establishment and food takeaway (sui-generis), non-residential institutions (including health (use class E(e)), primary school (use class F1), assembly and leisure (including indoor leisure (use classes E and F2), outdoor sports and leisure (use class F2), landscape, public realm, open space, allotments and orchards, associated infrastructure and off-site highways works pursuant to the Planning Permission
<b>"Development Standard"</b>	means a standard to fully comply with the following:-

	<p>(a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015</p> <p>(b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time</p> <p>(c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited</p> <p>(d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)</p> <p>or such other standard agreed in writing by the Head of Housing Services at the District Council</p>
<b>"Discount Market Price"</b>	means a sum which is the FH Market Value discounted by at least 30%
<b>"the District Council"</b>	means Malvern Hills District Council or any successor to its statutory functions
<b>"the District Council Allocations"</b>	means those Affordable Housing Dwellings to be allocated by the District Council in accordance with the Local Lettings Plan and Housing Accord
<b>"Dwelling"</b>	means a residential unit permitted to be constructed on the Land pursuant to the Planning Permission or a permission under Section 73 of the Act and "Dwellings" shall mean more than one Dwelling and which for the avoidance of doubt shall include the Affordable Housing Dwellings
<b>"Eligibility Criteria (National)"</b>	<p>means criteria which are met in respect of a purchase of a First Homes Unit if:</p> <p>(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</p> <p>(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National);</p>



<b>"Eligibility Criteria (Local)"</b>	<p>means criteria (if any) published by the District Council, Wychavon Council and the City Council at the date of the relevant FH Disposal of a First Homes Unit which are met in respect of a FH Disposal of a First Homes Unit if:</p> <p>(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and</p> <p>(b) any or all of criteria (i) (ii) and (iii) below are met:</p> <p>(i) the purchaser is a Qualifying Resident (or in the case of a joint purchase at least one of the joint purchasers is a Qualifying Resident); and/or</p> <p>(ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member; and/or</p> <p>(iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker</p>
<b>"Employer's Agent"</b>	<p>such person as may be appointed to undertake the role of employer's agent for the time being by the Owner, with the approval of the District Council and the Management Organisation, in relation to this Deed and each of the Building Contracts</p>
<b>"Employment Land"</b>	<p>means that part of the Development comprising the circa 14 ha of employment land shown broadly in the location coloured blue on Plan 3 for indicative purposes only</p>
<b>"Exempt FH Disposal"</b>	<p>means a transfer of the freehold of a First Homes Unit or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home Unit in one of the following circumstances:</p> <p>(a) to a spouse or civil partner upon the death of the First Homes Owner;</p> <p>(b) to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner;</p> <p>(c) to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or</p>

	<p>civil partnership or the making of a nullity, separation or presumption of death order; or</p> <p>(d) to a trustee in bankruptcy prior to sale of the relevant First Homes Unit (and for the avoidance of doubt paragraph 4 of Part 1B of the First Schedule shall apply to such sale),</p> <p>PROVIDED THAT in each case other than (d) the person to whom the transfer/assignment (as applicable) is made complies with the terms of paragraph 3 of Part 1B of the First Schedule;</p>
<b>"FH Disposal"</b>	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Homes Unit other than:</p> <p>(a) a letting or sub-letting in accordance with paragraph 3 of Part 1B of the First Schedule;</p> <p>(b) a transfer of the freehold interest in a First Homes Unit or land on which a First Homes Unit is to be provided before that First Homes Unit is made available for occupation except where the transfer is to a First Homes Owner; or</p> <p>(c) an FH Exempt Disposal,</p> <p>and "FH Disposed" and "FH Disposing" shall be construed accordingly</p>
<b>"FH Market Value"</b>	<p>means the open market value as assessed by a Valuer of dwellings as confirmed to the City Council, the District Council, and Wychavon District Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the Discount Market Price in the valuation</p>
<b>"FH Mortgagee"</b>	<p>means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Homes Unit including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Homes Unit</p>
<b>"First Home"</b>	<p>means the Affordable Housing Dwellings constructed pursuant to Schedule 1 which may be FH Disposed of to a First Time Buyer at the Discount Market Price and which on</p>

	its first FH Disposal does not exceed the Price Cap and "First Homes" shall be construed accordingly
<b>"First Homes Owner"</b>	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Homes Unit other than:</p> <p>(a) the Owner; or</p> <p>(b) another developer or other entity to which the freehold interest or leasehold interest in a First Homes Unit or in the land on which a First Homes Unit is to be provided has been transferred before that First Homes Unit is made available and is FH Disposed of for occupation as a First Home; or</p> <p>(c) a tenant or sub-tenant of a permitted letting under paragraph 3 of Part 1B of the First Schedule</p>
<b>"First Homes Units"</b>	means Affordable Housing Dwellings to be provided as First Homes and "First Homes Unit" shall be construed accordingly
<b>"First Time Buyer"</b>	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
<b>"General Market Dwellings"</b>	means Dwellings other than the Affordable Housing Dwellings constructed on the Land pursuant to the Planning Permission and for sale or potentially for sale on the open market
<b>"General Market Dwellings Phasing Plan"</b>	<p>means a plan to be submitted to the District Council in writing for approval in accordance with the provisions of Schedule 11 prior to the submission of the first Reserved Matters Application setting out how the General Market Dwellings are provided within each Phase to provide for:</p> <p>(i) Not less than 35% of the General Market Dwellings to be 1 and 2 bedroom units; and</p> <p>(ii) Not less than 35% of the General Market Dwellings to be 3 bedroom units; and</p> <p>(iii) Not more than 30% of the General Market Dwellings to be 4 and 4+ bedroom units</p> <p>across the Development such approval to be within the District Council's absolute discretion or such amendments to the plan as are from time to time agreed by the District Council in writing</p>

<b>"Governance Structure"</b>	means the governance arrangements of the Management Organisation listed at Appendix 6
<b>"HCA Model Protected Area Lease"</b>	shall mean a form of lease prepared by a Registered Provider in a form which has been approved and/or prescribed by Homes England as being an appropriate lease for the properties in a Protected Area as defined by the Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009 (or any amendment or re-enactment thereof)
<b>"Healthcare Accommodation"</b>	means a serviced plot of 0.4 ha (including all necessary and relevant pipes conduits cables and other conducting media for water gas sewerage drainage electricity of sufficient capacity to serve the Healthcare Accommodation) to accommodate a four GP practice and associated car parking to be provided within the Local Centre in accordance with the provisions of Schedule 5 to this Deed
<b>"Healthcare Contribution"</b>	means the sum of One Million, Seven Hundred and Twenty Thousand Pounds (£1,720,000.00) payable in accordance with Schedule 5 to this Deed such funds to be used towards the Agreed Purposes
<b>"Help to Buy Agent"</b>	shall mean BPHA Limited (Registered Society Number 26751R) known as Help to Buy Midlands and London or any organisation appointed by government from time to time to promote and market low cost home ownership and hold a register of eligible purchasers
<b>"Highways Contribution"</b>	means the sum of £19,833,770.00 (nineteen million eight hundred and thirty-three thousand, seven hundred and seventy pounds) made up of the following: <ul style="list-style-type: none"> <li>(i) £14,391,000.00 (fourteen million, three hundred and ninety-one thousand pounds) towards A4440 Phase 3 (Norton to Whittington roundabouts) Dualling (and associated works) ; and</li> <li>(ii) £510,000.00 (five hundred and ten thousand pounds) towards junction and highway works and bus infrastructure at Bath Road Sidbury, College Road and City Walls Road Corridor; and</li> <li>(iii) £19,000.00 (nineteen thousand pounds) towards bus infrastructure on A44 London Road; and</li> </ul>

	<p>(iv) £200,000.00 (two hundred thousand pounds) towards real time information systems and variable message systems on Bath Road and A44 London Road; and</p> <p>(v) £430,000.00 (four hundred and thirty thousand pounds) towards A4440 Eastern &amp; Northern E &amp; N Orbital junction capacity works; and</p> <p>(vi) £390,000.00 (three hundred and ninety thousand pounds) towards Parkway Railway Station; and</p> <p>(vii) £476,150.00 (four hundred and seventy-six thousand one hundred and fifty pounds) towards improved public transport services linking the Development to Worcester City Centre and to existing and proposed employment sites to the East of Worcester City; and</p> <p>(viii) £130,000.00 (one hundred and thirty thousand pounds) towards on-site public transport infrastructure to provide bus shelters and (where appropriate) real time passenger information systems; and</p> <p>(ix) £10,000.00 (ten thousand pounds) towards walkway and cycleway improvements to Norton Road, Crookbarrow Road and Brockhill Lane to provide dropped kerb crossing points and cycle signage; and</p> <p>(x) £2,946,650.00 (two million, nine hundred and forty-six thousand, six hundred and fifty pounds) towards the creation of the A4440 pedestrian and cycle bridge; and</p> <p>(xi) £72,070.00 (seventy-two thousand and seventy pounds) towards improvement to the west side A38 walkway/cycleway (Hatfield Lane to A4440 Ketch roundabout); and</p> <p>(xii) £250,000.00 (two hundred and fifty thousand pounds) towards residential travel planning; and</p> <p>(xiii) £8,900.00 (eight thousand and nine hundred pounds) towards traffic calming on Crookbarrow Way and Church Lane Norton</p>
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	and are all payable in accordance with Schedule 6 to this Deed
<b>"Home Choice Plus Register"</b>	shall mean the register for allocating the Affordable Housing Dwellings administered by the City Council or any equivalent or similar replacement from time to time in existence
<b>"Homes England"</b>	means Homes England or any successor to its statutory functions
<b>"Housing Accord"</b>	means the document known as the South Worcestershire Housing Accord agreed between the City Council, the District Council and Wychavon District Council in November 2016 (or such other agreement made between the City Council, the District Council and Wychavon District Council), setting out the way that the Affordable Housing Dwellings shall be allocated
<b>"the Housing Act"</b>	means the Housing Act 1985 or any statutory modification or re-enactment thereof
<b>"Housing For You Register"</b>	shall mean the allocations policy and housing register for allocating the Affordable Housing Dwellings administered by the City Council, District Council and Wychavon District Council or any equivalent or similar replacement from time to time in existence
<b>"Income Cap (Local)"</b>	means such local income cap as may be published from time to time by the District Council, Wychavon District Council and / or the City Council and is in force at the time of the relevant FH Disposal of the First Homes Unit it being acknowledged that at the date of this Deed neither the District Council, Wychavon District Council nor the City Council have set an Income Cap (Local)
<b>"Income Cap (National)"</b>	means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant FH Disposal of the First Homes Unit
<b>"Initial Investment Funding"</b>	means the sum of £150,000 (one hundred and fifty thousand pounds) which shall be paid to the Management Organisation in accordance with the provisions of Schedule 4 for the purposes of covering the costs incurred by the District Council, Wychavon District Council, the City Council, and/or the Management Organisation in creating and establishing the Management Organisation but not

	limited to paying for the provision and recruitment of staff and provision and purchase of equipment
<b>"Intermediate Housing Units"</b>	means those Affordable Housing Dwellings, including their plots and allocated parking spaces and garages as shall be constructed on the Land pursuant to the provisions of Schedule 1 and the Affordable Housing Scheme which Affordable Housing Dwellings are to be provided as Shared Ownership Dwellings and references to "Intermediate Housing Unit" shall be construed accordingly
<b>"Key Worker"</b>	means a person employed or with a confirmed job offer in one of the following such categories of employment as may be designated and published by the District Council, Wychavon District Council and / or the City Council (as appropriate) from time to time as the 'First Homes Key Worker criteria' and is in operation at the time of the relevant FH Disposal of the First Homes Unit and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant FH Disposal of the First Homes Unit shall be the 'Key Worker' criteria which shall apply to that FH Disposal it being acknowledged that at the date of this Deed neither the District Council, Wychavon District Council and / or the City Council have designated any categories of employment as Key Workers
<b>"the Land"</b>	means the area of land shown edged red on Plan 1 (provided always for the avoidance of doubt that no part of the Land which is highway at the date of this Deed shall be bound by the obligations in this Deed).
<b>"the Land Trust"</b>	means The Land Restoration Trust (Company Registration No. 5077263) which is also a charity registered with the Charity Commission in England and Wales (Registered Charity No. 1138337)
<b>"Local Centre"</b>	means the local centre to be provided on the Land in accordance with the Planning Permission
<b>"Local Employment and Training Action Plan"</b>	means a plan setting out proposals for the implementation of employment and training initiatives in general accordance with the Local Employment and Training Strategy
<b>"Local Employment and Training Strategy"</b>	means the strategy annexed to this Deed at Appendix 3

<b>“Local Engagement Strategy”</b>	a strategy setting out how the Management Organisation will liaise with stakeholders in the Development, including the residents of the Dwellings and care home, Registered Providers, occupiers of the Employment Land and Local Centre, the District Council, Wychavon District Council, the City Council, the County Council, the Parish Council, Norton Juxta Kempsey Parish Council, and St Peter The Great County Parish Council in relation to matters such as the Service Charge Increase Provisions and which shall include a complaints procedure
<b>“Local Lettings Plan”</b>	means a local lettings plan for each Phase prepared by the City Council, the District Council, and Wychavon District Council in consultation with the relevant Registered Providers (acting reasonably) in accordance with the Housing Accord
<b>“Management Organisation”</b>	means the Land Trust or such company to be wholly owned by the Land Trust which has the same charitable objectives (or such other organisation as may be approved by the District Council in writing ) responsible for the delivery of the Community Facility Purposes and any such other responsibilities agreed by the District Council as part of the Management Organisation Management Plan to be operated in accordance with the Governance Structure and the provisions of Schedule 4 to this Deed)
<b>“Management Organisation Account”</b>	means the account or accounts which may include existing accounts of the Management Organisation or accounts to be established for the Management Organisation for the purpose of holding the Service Charge, the Rental Income, and any other funding the Management Organisation shall receive towards the cost of performing its maintenance and management duties pursuant to Schedule 4
<b>“Management Organisation Management Plan”</b>	means a management plan setting out: <ul style="list-style-type: none"> <li>- The proposed ongoing roles, responsibilities and obligations of the Management Organisation, which shall include the management and maintenance of the Community Facilities in accordance with the Community Facilities Management Plan;</li> <li>- The ongoing Governance Structure;</li> </ul>



	<ul style="list-style-type: none"> <li>- The proposals for the establishment and ongoing operation of the Management Organisation Account; and</li> <li>- The proposals for both the initial funding and the ongoing funding of the Management Organisation for the Development including the Initial Investment Funding, Ongoing Funding Income, Rental Income, and Service Charge, and the Service Charge Increase Provisions, which may include any projected income and any projected liabilities including tax liabilities in respect of the Development.</li> <li>- The Local Engagement Strategy;</li> </ul> <p>to be approved by the District Council pursuant to Schedule 4 to this Deed or such variation to the business plan as may be approved by the District Council in writing from time to time</p>
<b>"Market Rent"</b>	means the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction , after proper marketing and where the parties had each acted, knowledgeably, prudently and without compulsion
<b>"Market Value"</b>	means the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction , after proper marketing and where the parties had each acted, knowledgeably, prudently and without compulsion
<b>"Middle Broomhall Farm"</b>	means the Grade II listed building known as Middle Broomhall Farm situated within the Land
<b>"Middle Broomhall Farm Works"</b>	means all the restoration, fit out, infrastructure, access and ancillary works to be undertaken at Middle Broomhall Farm with all necessary services connections and infrastructure ready for occupation and in order that Middle Broomhall Farm can provide the Community Facilities in accordance with the Scheme of Works in accordance with Schedule 7
<b>"Mortgagee"</b>	shall mean any mortgagee or chargee or lender of an occupier of an Affordable Housing Dwelling with a charge secured on the occupier's Completed Dwelling or Completed Dwellings constructed on any part of the Land and the expression Mortgagee shall include any receiver or

	manager or other party appointed pursuant to any statutory or contractual right to exercise the mortgagee / chargee / lender's security arising from the said charge and shall include any mortgagee or chargee or lender acting as a security trustee
<b>"Novation"</b>	the arrangements under which the Owner the Building Contractor and the Management Organisation or the District Council (as the case may be) agree to substitute the District Council as counterparty to the Building Contractor in substitution for the Owner under the terms and conditions of the Building Contract;
<b>"Occupation"</b>	means the date at which a Dwelling is first occupied for the purposes permitted by the Planning Permission but excluding occupation of a Dwelling where that Dwelling is being used solely for the purpose of a show home/flat (where no persons are resident) in the course of marketing the Development and not including occupation by personnel engaged in construction fitting out or decoration or occupation in relation to security operations and "Occupied" and "Occupy" will be construed accordingly
<b>"On Site Public Open Space"</b>	means public open space to be provided on the Land including playing pitches / courts, allotments, orchards, and neighbourhood equipped areas for play, local equipped areas for play, and local areas for play, build facilities (including the Sports Pavilion) and areas of landscaping and attenuation pond (if required) and appropriate access to and egress from it for the general public and for maintenance purposes to be provided in accordance with the Public Open Space Phasing Plan and On Site Public Open Space Plans approved by the District Council in accordance with Schedule 8 of this Deed
<b>"On Site Public Open Space Plan"</b>	means the plan confirming the details, layout, and specification of the On Site Public Open Space in a Phase and the proposals for future maintenance to be submitted by the Owner to the District Council for approval in accordance with the provisions of Schedule 8 of this Deed
<b>"Ongoing Investment Funding"</b>	means the funding to be provided on an annual basis in accordance with the Management Organisation Management Plan for a period of ten years from the date of the Occupation of the first Dwelling in accordance with Schedule 4 of this Deed to use as revenue for the Management Organisation such funding to be sufficient to ensure that all the costs incurred by the Management

	Organisation in carrying out its functions and discharging its responsibilities for the maintenance and management of the Community Facilities in accordance with the Community Facilities Management Plan are met, but taking into account any revenue received by the Management Organisation from Rental Income or Service Charge in each year
<b>"Option Period"</b>	means the initial period of three (3) years from the date of this Deed and in the event that the NHS Property Services (or any successor body) confirm in writing to the Owner and District Council within the initial period of three (3) years that it intends to acquire the Healthcare Accommodation, such period shall be extended until the date of Occupation of the 1,000 <sup>th</sup> Dwelling
<b>"the Owner"</b>	means the First Owner, the Second Owner, the Third Owner, the Fourth Owner, the Fifth Owner, the Sixth Owner, the Seventh Owner, the Eighth Owner, the Ninth Owner, the Tenth Owner, the Eleventh Owner, the Twelfth Owner, and the Thirteenth Owner
<b>"the Parish"</b>	means the parish of Kempsey
<b>"the Parish Council"</b>	means the parish council of Kempsey
<b>"the Parishes"</b>	means the parishes of Powick and Seven Stoke
<b>"Phase"</b>	means a phase of the Development pursuant to a Reserved Matters Application which has been approved by the District Council, Wychavon District Council and / or City Council
<b>"Plan 1"</b>	means the plan attached to this Deed at Appendix 2 and marked "Plan 1" showing the Land edged in red
<b>"Plan 2"</b>	means the plan attached to this Deed at Appendix 2 and marked "Plan 2" showing the proposed Community Facilities indicatively
<b>"Plan 3"</b>	means the plan attached to this Deed at Appendix 2 and marked "Plan 3" being a 'Parameter Plan' showing the broad location of the Employment Land
<b>"the Planning Permission"</b>	means the permission to be granted pursuant to the Application and any approved non-material amendment to it

<b>"Practical Completion Date"</b>	means the date stated in the certificate of practical completion issued under the Building Contract or in the case of a JCT Design & Build Contract a statement of practical completion
<b>"Price Cap"</b>	means the amount for which the First Homes Unit is sold after the application of the Discount Market Price which on its first FH Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
<b>"Primary Contribution"</b>	means the sum of £6,173,972.53 (six million, one hundred and seventy-three thousand, nine hundred and seventy two pounds and fifty-three pence) towards the cost of providing a new two-form entry primary school and nursery on the Primary School Site and payable in accordance to Schedule 2 of this Deed
<b>"Primary School Plan"</b>	means a plan based on that appended to this Deed at Appendix 2 and marked Primary School Plan showing the extent of the Primary School Site to be submitted by the County Council in accordance with the provisions of Schedule 10 of this Deed and which shall show the precise boundaries of the Primary School Site to be transferred from the Owner to the County Council. The Primary School Plan is to include details of the levels of the location and levels of the connection of the Spine Road and Temporary Access Haul Road to the Primary School Site. The Primary School Plan is also to include details of the location and depths of the connection of the Services to the Primary School Site and any temporary services along the Temporary Access Haul Road.
<b>"Primary School Site"</b>	means the area of the Land being approximately 2.57ha (with a tolerance of adjustment for the boundaries of five metres) as shown edged red on the Primary School Plan (which for the avoidance of doubt shall not include the Temporary Access Haul Road). to be transferred to the County Council in accordance with the provisions of Schedule 10 to this Deed which must be suitable for the construction of a new two-form entry primary school with nursery provision and ancillary facilities to the satisfaction of the County Council
<b>"Primary School Site Transfer"</b>	means a transfer of the freehold of the Primary School Site to the County Council on the following terms:

	<p>a. at nil consideration;</p> <p>b. free from all encumbrances and contamination such that the Primary School Site is suitable for its stated purpose</p> <p>c. with payment by the Owner of all fees incurred by the County Council in accepting the transfer of the Primary School Site including but not limited to legal, land registry fees and stamp duty land tax (if applicable)</p> <p>d. with the benefit of rights over all access roads and footpaths (including without prejudice to the generality of this clause over the Spine Road and Temporary Access Haul Road in accordance with the provisions of Schedule 10),</p> <p>e. with the benefit of all necessary Services and conducting media to serve the Primary School Site such services to be provided along the Spine Road and any temporary services along the Temporary Access Haul Road in accordance with the provisions of Schedule 10)</p> <p>f. contain a restrictive covenant expressed to be for the benefit of the freehold of the remainder of the Land and each and every part thereof to the effect that the Primary School Site shall not be used for any purpose other than for educational purposes in perpetuity</p> <p>g. with the benefit of a right of support for the Primary School Site from the Owner's retained Land</p> <p>h. a requirement for the developer to supply the land free from all charges and freed from all restrictions affecting the titles and free from any tenancies affecting the title</p>
<b>"Professional Team"</b>	<p>means the consultants appointed by the Building Contractors and the Owner to carry out and complete the design of the Sports Pavilion and the Middle Broomhall Farm Works which shall include the architect, the Principal Designer (as defined in the CDM Regulations), the Employer's Agent/Contract Administrator (as defined in the Building Contract), the structural engineer, the M&amp;E engineer and any other specialist advisors or sub-consultants that may, with the approval of the District Council, be appointed for the time being in connection with the design or management of the Community Purpose Works</p>

<b>"Protected Tenant"</b>	<p>means any tenant or leaseholder who:</p> <ul style="list-style-type: none"> <li>a) has exercised any statutory right to buy in respect of a particular Affordable Housing Dwelling (which expression excludes any tenant or leaseholder who has exercised a voluntary right to buy); or</li> <li>b) is a leaseholder of a Shared Ownership Dwelling and has subsequently purchased from the freeholder all the remaining equitable shares in that Shared Ownership Dwelling so that the said tenant or leaseholder owns the entire Shared Ownership Dwelling</li> </ul>
<b>"Public Open Space Phasing Plan"</b>	<p>means the plan confirming the phasing of the provision of the Temporary Public Open Space and On Site Public Open Space to be submitted by the Owner to the District Council for approval in accordance with the provisions of Schedule 8 of this Deed which for the avoidance of doubt will provide that all On Site Public Open Space, including the Sports Pavilion, is provided before the Occupation of the 1,000<sup>th</sup> Dwelling</p>
<b>"Public Right of Way"</b>	<p>means the public right of way being designated footpath 524 (C) shown coloured blue on the Primary School Plan</p>
<b>"Qualifying Resident"</b>	<p>means:</p> <p><u>City Council Allocations</u></p> <p>in the case of the City Council Allocations means in the case of Social Rented Units and Shared Ownership Dwellings:</p> <ul style="list-style-type: none"> <li>(a) a person or household registered on the Housing For You Register or any subsequent allocation scheme adopted by the City Council or otherwise approved by the City Council in accordance with the relevant policies set out in the South Worcestershire Development Plan that are unable to rent or purchase housing on the open market within the administrative area of the City Council; and</li> <li>(b) that meets the eligibility criteria for such register or policy; and</li> <li>(c) has a local connection to the administrative area of the City Council namely:</li> </ul>

	<ul style="list-style-type: none"> <li>(i) has lived in the administrative area of Worcester in a settled residence of their choice (excluding prison or casual accommodation) for 6 months out of the last 12 months or 3 years out of the last 5 years; or</li> <li>(ii) Has permanent paid employment of over 16 hours per week within the administrative area of Worcester; or</li> <li>(iii) Has immediate family living in the administrative area of Worcester for a minimum of 5 years prior to the application being made (restricted to mother, father, brother, sister, adult son or adult daughter, including step and foster of the same); or</li> <li>(iv) Has a local connection to the administrative area of Worcester as a result of special circumstances (subject to approval by the City Council's Housing &amp; Welfare Options Team Manager such approval not to be unreasonably withheld or delayed)</li> </ul> <p>SAVE THAT in respect of the Social Rented Units only:</p> <ul style="list-style-type: none"> <li>(d) To the extent that no such persons qualify pursuant to the provisions of (c) above then any other persons who are registered on the Housing For You Register subject to the approval of the Housing &amp; Welfare Options Team Manager (such approval not to be unreasonable withheld or delayed); or</li> <li>(e) Further, that if no such persons qualify under the provisions of (a) to (d) above than to any other persons who are ordinarily resident in the United Kingdom as are approved in writing by the Head of Homes and Communities for the City Council as being in need of Affordable Housing (such approval not to be unreasonably withheld or delayed)</li> </ul> <p>AND FURTHER means in the case of the Shared Ownership Dwellings only:</p>
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	<p>(f) A person or household who is ordinarily resident in the United Kingdom who is registered with and approved by the Help to Buy Agent as being in need of Affordable Housing if any of the following circumstances apply:</p> <ul style="list-style-type: none"> <li>(i) If no such persons qualify pursuant to (a) to (c) above; or</li> <li>(ii) If the City Council has issued written notice that it accepts that Help to Buy Shared Ownership Funding (or other similar funding provided by Homes England or any successor body) has been secured for that Shared Ownership Dwelling pursuant to the Homes England Capital Funding Guidance dated 4 November 2016 and updated 26 February 2021 (or any amendment or equivalent replacement thereof from time to time (which may from time to time include armed services personnel) that also provides that the above local connection criteria otherwise restrict or preclude that grant funding); or</li> <li>(iii) If contracts have not exchanged to sell/lease the Shared Ownership Dwelling nor completion occurred (where no exchange of contracts occurred) to any persons listed above at open market value through no fault of the seller for not less than three months of the Shared Ownership Dwelling being marketed for sale, but not before one month has expired following Completion of the said Shared Ownership Dwelling.</li> </ul> <p>Subject always to written approval by the Head of Homes and Communities for the City Council that the circumstances in (f) above exist, such approval not to be unreasonably withheld or delayed in the case of the same being evidenced by the seller</p> <p>AND FURTHER in the case of the First Homes Units only</p> <ul style="list-style-type: none"> <li>(g) a person or household who has a local connection to the administrative area of the City Council namely:</li> </ul>
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	<ul style="list-style-type: none"> <li>(i) has lived in the administrative area of Worcester in a settled residence of their choice (excluding prison or casual accommodation) for 6 months out of the last 12 months or 3 years out of the last 5 years; or</li> <li>(ii) Has permanent paid employment of over 16 hours per week within the administrative area of Worcester; or</li> <li>(iii) Has immediate family living in the administrative area of Worcester for a minimum of 5 years prior to the application being made (restricted to mother, father, brother, sister, adult son or adult daughter, including step and foster of the same); or</li> <li>(iv) Has a local connection to the administrative area of Worcester as a result of special circumstances (subject to approval by the City Council's Housing &amp; Welfare Options Team Manager such approval not to be unreasonably withheld or delayed)</li> </ul> <p>Provided that if no person qualifies pursuant to (i) to (iv) above then any person who is ordinarily resident in the United Kingdom and who is approved in writing by the Head of Homes and Communities for the City Council as being in need of Affordable Housing such approval not to be unreasonable withheld or delayed in the case of the same being evidenced by the seller</p> <p><u>District Council Allocations</u></p> <p>in the case of the District Council Allocations means in the case of Social Rented Units a person who is in need of Affordable Housing and is on the Housing For You Register and meets the following criteria:</p> <ul style="list-style-type: none"> <li>(a) Has lived in the Parish by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</li> <li>(b) Has close family living in the Parish, who have been permanently resident for at least the previous five years (close family is specifically mother,</li> </ul>
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	<p>father, brother, sister, adult son or adult daughter); or</p> <p>(c) Has permanent paid employment in the Parish; or</p> <p>(d) Has a local connection to the Parish as a result of special circumstances (subject to the approval by the Head of Housing Services at the District Council)</p> <p>If no person qualifies pursuant to (a) – (d) above for the District Council Allocations then a person who is on the Housing For You Register and is in need of Affordable Housing and:</p> <p>(e) Has lived in any of the Parishes by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p> <p>(f) Has close family living in any of the Parishes, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p> <p>(g) Has permanent paid employment in any of the Parishes; or</p> <p>(h) Has a local connection to the Parishes as a result of special circumstances (subject to the approval by the Head of Housing Services at the District Council)</p> <p>If no persons qualifies pursuant (e) to (h) above for the District Council Allocations then a person who is on the Housing For You Register and is in need of Affordable Housing and:</p> <p>(i) Has lived in the District of Malvern Hills by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p> <p>(j) Has close family living in the District of Malvern Hills, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p>
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	<p>(k) Has permanent paid employment in the District of Malvern Hills; or</p> <p>(l) Has a local connection to the District of Malvern Hills as a result of special circumstances (subject to the approval by the Head of Housing Services at the District Council)</p> <p>If no person qualifies pursuant to (i) to (l) above for the District Council Allocations then any person who is ordinarily resident in the United Kingdom and who is approved in writing by the District Council as being in need of Affordable Housing (such approval not to be unreasonably withheld or delayed) AND in the case of the District Council Allocations means in the case of First Homes Units and Shared Ownership Dwellings a person who is in need of Affordable Housing and in the case of Shared Ownership Dwellings is also registered with and approved by Help to Buy Agent and in the case of both First Homes Units and Shared Ownership Dwellings meets the following criteria:</p> <p>(a) Has lived in the Parish by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p> <p>(b) Has close family living in the Parish, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p> <p>(c) Has permanent paid employment in the Parish; or</p> <p>(d) Has a local connection to the Parish as a result of special circumstances (subject to the approval by the Head of Housing Services at the District Council)</p> <p>If no person qualifies pursuant to (a) – (d) above for the District Council Allocations then a person who is in need of Affordable Housing and in the case of Shared Ownership Dwellings is also is registered with and approved by the Help to Buy Agent and <i>for both First Homes Units and Shared Ownership Dwellings:</i></p> <p>(e) Has lived in any of the Parishes by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p>
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- (f) Has close family living in any of the Parishes, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or
- (g) Has permanent paid employment in any of the Parishes; or
- (h) Has a local connection to the Parishes as a result of special circumstances (subject to the approval by the Head of Housing Services at the District Council)

If no persons qualifies pursuant (e) to (h) above for the District Council Allocations then a person who is in need of Affordable Housing and in the case of Shared Ownership Dwellings is also is registered with and approved by the Help to Buy Agent and

*in the case of both First Homes Units and Shared Ownership Dwellings:*

- (i) Has lived in the District of Malvern Hills by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or
- (j) Has close family living in the District of Malvern Hills, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or
- (k) Has permanent paid employment in the District of Malvern Hills; or
- (l) Has a local connection to the District of Malvern Hills as a result of special circumstances (subject to the approval by the Head of Housing Services at the District Council)

If no person qualifies pursuant to (i) to (l) above for the District Council Allocations then any person who is ordinarily resident in the United Kingdom and who is approved in writing by the District Council as being in need of Affordable Housing (such approval not to be unreasonably withheld or delayed)

PROVIDED THAT in respect of the Shared Ownership Dwellings within the District Council Allocations none of the preceding definition of Qualifying Resident shall apply if the

Council has issued written notice that it accepts that Help to Buy Shared Ownership Funding (or other similar funding provided by Homes England or any successor body) has been secured for that Shared Ownership Dwelling pursuant to the Homes England Capital Funding Guidance dated 4 November 2016 and updated 26 February 2021 (or any amendment or equivalent replacement thereof from time to time (which may from time to time include armed services personnel) that also provides that the above local connection criteria would otherwise restrict or preclude that grant funding) and in that case Qualifying Resident shall mean a person who is approved by the Help to Buy Agent and is in need of Affordable Housing

PROVIDED FURTHER that in respect of Shared Ownership Dwelling that if contracts have not been exchanged to sell/lease the Shared Ownership Dwelling to any persons listed above at Market Value taking into account the existence of this Deed (or completion effected where there is to be no exchange of contracts) through no fault of the seller for not less than 3 months of the Shared Ownership Dwelling being marketed for sale, but not before one month has expired following Completion of the Shared Ownership Dwellings then Qualifying Resident shall mean any person who is registered with and approved by the Help to Buy Agent as being in need of Affordable Housing for the District Council Allocations

#### Wychavon Council Allocations

in the case of the Wychavon Council Allocations means in the case of Social Rented Units a person who is in need of Affordable Housing and is on the Housing For You Register and meets the following criteria:

- (a) Has lived in the Wychavon Parish by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or
- (b) Has close family living in the Wychavon Parish, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or

	<p>(c) Has permanent paid employment in the Wychavon Parish; or</p> <p>(d) Has a local connection to the Wychavon Parish as a result of special circumstances (subject to the approval by the Head of Housing Services at Wychavon District Council)</p> <p>If no person qualifies pursuant to (a) – (d) above for the Wychavon Council Allocations then a person who is on the Housing For You Register and is in need of Affordable Housing and:</p> <p>(e) Has lived in any of the Wychavon Parishes by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p> <p>(f) Has close family living in any of the Wychavon Parishes, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p> <p>(g) Has permanent paid employment in any of the Wychavon Parishes; or</p> <p>(h) Has a local connection to the Wychavon Parishes as a result of special circumstances (subject to the approval by the Head of Housing Services at Wychavon District Council)</p> <p>If no persons qualifies pursuant (e) to (h) above for the Wychavon Council Allocations then a person who is on the Housing For You Register and is in need of Affordable Housing and:</p> <p>(i) Has lived in the District of Wychavon by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p> <p>(j) Has close family living in the District of Wychavon, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p>
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(k) Has permanent paid employment in the District of Wychavon; or

(l) Has a local connection to the District of Wychavon as a result of special circumstances (subject to the approval by the Head of Housing Services at Wychavon District Council)

If no person qualifies pursuant to (i) to (l) above for the Wychavon Council Allocations then any person who is ordinarily resident in the United Kingdom and who is approved in writing by Wychavon District Council as being in need of Affordable Housing (such approval not to be unreasonably withheld or delayed)

AND in the case of the Wychavon Council Allocations means in the case of First Homes Units <sup>and</sup> Shared Ownership Dwellings a person who is in need of Affordable Housing and in the case of Shared Ownership Dwellings is also registered with and approved by Help to Buy Agent and in the case of both First Homes Units and Shared Ownership Dwellings meets the following criteria:

(a) Has lived in the Wychavon Parish by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or

(b) Has close family living in the Wychavon Parish, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or

(c) Has permanent paid employment in the Wychavon Parish; or

(d) Has a local connection to the Wychavon Parish as a result of special circumstances (subject to the approval by the Head of Housing Services at Wychavon District Council)

If no person qualifies pursuant to (a) – (d) above for the District Wychavon Council Allocations then a person who is in need of Affordable Housing and in the case of Shared Ownership Dwellings is also registered with and approved by the Help to Buy Agent and <sup>in the case of both</sup>

<sup>First Homes Units and Shared Ownership Dwellings:</sup>

	<p>(e) Has lived in any of the Wychavon Parishes by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p> <p>(f) Has close family living in any of the Wychavon Parishes, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p> <p>(g) Has permanent paid employment in any of the Wychavon Parishes; or</p> <p>(h) Has a local connection to the Wychavon Parishes as a result of special circumstances (subject to the approval by the Head of Housing Services at Wychavon District Council)</p> <p>If no persons qualifies pursuant (e) to (h) above for the Wychavon Council Allocations then a person who is in need of Affordable Housing and in the case of Shared Ownership Dwellings is also registered with and approved by the Help to Buy Agent and <i>in the case of both First Homes Units and Shared Ownership Dwellings:</i></p> <p>(i) Has lived in the District of Wychavon by choice for a certain time (for six months out of the last twelve months or for three years out of the last five years); or</p> <p>(j) Has close family living in the District of Wychavon, who have been permanently resident for at least the previous five years (close family is specifically mother, father, brother, sister, adult son or adult daughter); or</p> <p>(k) Has permanent paid employment in the District of Wychavon; or</p> <p>(l) Has a local connection to the District of Wychavon as a result of special circumstances (subject to the approval by the Head of Housing Services at Wychavon District Council)</p> <p>If no person qualifies pursuant to (i) to (l) above for the Wychavon Council Allocations then any person who is ordinarily resident in the United Kingdom and who is approved in writing by the Wychavon District Council as</p>
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	<p>being in need of Affordable Housing (such approval not to be unreasonably withheld or delayed)</p> <p>PROVIDED THAT in respect of the Shared Ownership Dwellings within the Wychavon Council Allocations none of the preceding definition of Qualifying Resident shall apply if Wychavon District Council has issued written notice that it accepts that Help to Buy Shared Ownership Funding (or other similar funding provided by Homes England or any successor body) has been secured for that Shared Ownership Housing Unit pursuant to the Homes England Capital Funding Guidance dated 4 November 2016 and updated 26 February 2021 (or any amendment or equivalent replacement thereof from time to time (which may from time to time include armed services personnel) that also provides that the above local connection criteria would otherwise restrict or preclude that grant funding) and in that case Qualifying Resident shall mean a person who is approved by the Help to Buy Agent and is in need of Affordable Housing</p> <p>PROVIDED FURTHER that in respect of Shared Ownership Dwellings that if contracts have not been exchanged to sell/lease the Shared Ownership Dwelling to any persons listed above at Market Value taking into account the existence of this Deed (or completion effected where there is to be no exchange of contracts) through no fault of the seller for not less than 3 months of the Shared Ownership Dwelling being marketed for sale, but not before one month has expired following Completion of the Shared Ownership Dwellings then Qualifying Resident shall mean any person who is registered with and approved by the Help to Buy Agent as being in need of Affordable Housing for the Wychavon Council Allocations</p>
<b>“Registered Provider”</b>	means a provider of social housing as defined by Part 2 of the Housing and Regeneration Act 2008 or other entity providing Affordable Housing under equivalent arrangements who is approved or accredited by the Regulator of Social Housing or similar successor body
<b>“Regulator of Social Housing”</b>	means the regulatory body for social housing established by Section 80A of the Housing and Regeneration Act 2008 (as amended)
<b>“Rental Income”</b>	means the rental income (including Service Charge, if any) from premises and / or facilities owned and / or operated

	by the Management Organisation, including the Sports Pavilion
<b>"Requisite Consents"</b>	means building regulation approvals, by-law approvals, and any other consents, licences and authorisations required from any competent authority, statutory undertaker or person either for the carrying out of the Sports Pavilion and ancillary works or for its intended use as contemplated by the terms of the Planning Permission.
<b>"Reserved Matters Application"</b>	means an application for reserved matters approval pursuant to the Planning Permission
<b>"Retail Prices Index"</b>	means the Retail Prices Index for "All Items" published by the Office for National Statistics or in the event that the Office for National Statistics shall cease to compile or publish the said Retail Prices Index such other index as the parties hereto shall agree or in default of agreement such Index as shall be determined for the purposes of this Deed as being an Index which gives an accurate indication of the rate of inflation of prices in the United Kingdom from month to month
<b>"Scheme of Works"</b>	means a scheme of works for the restoration of Middle Broomhall Farm (subject to obtaining all necessary consents and approvals) to be approved by the District Council and Management Organisation in writing in accordance with the provisions of Schedule 7 of this Deed
<b>"SDLT"</b>	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
<b>"Secondary Contribution"</b>	<p>means a sum to be calculated as follows:</p> <ul style="list-style-type: none"> <li>- £2,786 per 2 or 3 bed Dwellings (excluding flats and apartments);</li> <li>- £4,179 per 4+ bed Dwellings (excluding flats and apartments); ;</li> <li>- £1,115 per 2+ bed flats and apartments;</li> <li>- £0 per 1 bed Dwelling or flat;</li> <li>- £0 per Affordable Housing Dwelling</li> </ul> <p>to be used towards the enhancement and improvement of secondary education by providing 2 x 1 form entry expansions at Nunnery Wood High School and Tudor Grange Academy in Worcester or the provision of a new</p>

	secondary school and payable in accordance to Schedule 2 of this Deed
<b>"Secretary of State"</b>	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
<b>"Service Charge"</b>	means the service charge payable on an annual basis by the owners of the Dwellings (including Registered Providers in accordance with the provisions of Schedule 1) and owners of the Employment Land and owners of the commercial units within the Local Centre and the care home to the Management Organisation in accordance with the provisions of Schedule 4 of this Deed as a contribution towards the cost of the Community Facilities Purposes which shall initially be set at an average of £300 per Dwelling and will be set as charge per square foot of internal floorspace for the care home, and commercial units within the Employment Land and Local Centre being such fair and reasonable proportion of the costs relating to the services provided and which may be increased in accordance with the Service Charge Increase Provisions and FOR THE AVOIDANCE OF DOUBT nothing (other than the provisions of Schedule 1 in relation to Affordable Housing Dwellings) shall prevent the owners of the Dwellings, Employment Land, commercial units within the Local Centre, and / or care home from passing the cost of the service charge onto the occupiers of the relevant property providing that this shall be recoverable from the owners in the event of non-payment by the occupiers and FOR THE AVOIDANCE OF DOUBT the Service Charge shall not be payable by the owners or occupiers of the Primary School Site
<b>"Service Charge Increase Provisions"</b>	means a mechanism contained within the Management Organisation Management Plan which sets out the consultation arrangements with persons and organisations responsible for paying the Service Charge, before there is any increase in the Service Charge and which also sets out dispute resolution provisions for any disputes relating to the increase in Service Charge comprising an internal Management Organisation complaints procedure and provision for reference of disputes to an independent body in the event that the internal complaints procedure has been exhausted

<b>"Services"</b>	<p>Means the following sufficient services to be provided by the Owner to service the Primary School Site for 420 no. pupils, plus Nursery along the new spine road to the northern/western boundary of the Primary School Site</p> <p><b>Water:-</b> approximate daily cold water consumption of 6,300 litres, including cold water storage of 3,150 litres, with an equivalent and additional hot water consumption of 6,300 litres, with 2,100 litres of hot water storage. The approximate simultaneous demand flow is 2.85 litres/second.</p> <p><b>Gas:-</b> The overall incoming gas load is currently estimated to be 330 kW, and this will be the provision.</p> <p><b>Electricity:-</b> An allowance to supply 240 kVa, which includes 20% spare future capacity.</p> <p><b>Foul Drainage:-</b> The school will require a 150 mm foul drainage connection to the mains sewer.</p> <p><b>Sustainable Urban Drainage Systems (SUDS):-</b> Stormwater flows within the Primary School Site will be managed to the pre-development rates of the site. An outfall route will be required for any excess stormwater into a storm drain or the wider SUDS network development.</p> <p><b>Telephone and Broadband:-</b> The school could cope with 40 Mb/s currently, but if FTTP (Fibre to the Premises) will be available then this is preferred as this could offer up to 330 Mbs at existing speeds. The Owner will provide suitable ducting to accommodate the above specification</p>
<b>"Shared Ownership Dwelling"</b>	<p>means those Affordable Housing Dwellings and their plots and allocated parking spaces/garages as shall be constructed on the Land pursuant to the provisions of Schedule 1 and the Affordable Housing Scheme where a minimum 50% share of the equity is sold on a long lease to the purchaser and the remainder of the equity is initially retained by the Registered Provider subject to rent being charged on the retained equity on terms that are set out in the HCA Model Protected Area Lease</p>
<b>"Social Rented Units"</b>	<p>means the Affordable Housing Dwellings constructed pursuant to Schedule 1 where the rents are calculated in accordance with the formula for setting social rent levels in The Policy Statement on Rents for Social Housing issued</p>

	by the Ministry of Housing Communities and Local Government February 2019 Chapter 2 and Appendices A and B the document entitled "Limit on Annual Rent Increases 2020 -2021" issued by The Regulator of Social Housing April 2020 and the document entitled Rent Standard April 2020 issued by the Regulator of Social Housing or any amendment to or replacement of these from time to time
<b>"Spine Road"</b>	means a public road constructed to adoptable standards and open to all traffic connecting from Norton Road highway east of the Land to the Primary School Site in accordance with the provisions of Schedule 10
<b>"Sports Pavilion"</b>	means the sports pavilion to be provided within the On Site Public Open Space within the Norton Fields area as identified in the Application and the Sports Pavilion Specification which is to be transferred to the Management Organisation together with the On Site Public Open Space in accordance with the provisions of Schedule 8 to this Deed
<b>"Sports Pavilion Specification"</b>	means the specification in respect of the Sports Pavilion annexed at Appendix 5 to this Deed
<b>"Sports Pavilion Works"</b>	means all of the works to be undertaken in accordance with Schedule 8 and the Sports Pavilion Specification and all associated ancillary works including all necessary services connections and infrastructure ready for occupation
<b>"Strategic SUDS"</b>	means the sustainable urban drainage systems and flood water bypass infrastructure to be approved by the District Council as part of the Public Open Space Phasing Plan and On Site Public Open Space Plans and transferred to the Management Organisation accordance with Schedule 8 of this Deed
<b>"Temporary Access Haul Road"</b>	means the access to the Primary School Site to be provided by the Owner in accordance with the provisions of Schedule 10 from the publicly maintainable highway and shown for identification purposes only hatched orange on the Primary School Plan
<b>"Temporary Public Open Space"</b>	means the area of the Land agreed with the District Council such area of the Land not to exceed 0.84ha which shall be seeded with grass, and provided as mown grassed informal public open space in accordance with the provisions of

	Schedule 8 to this Deed and the specification set out in Appendix 4 to this Deed
<b>"Traveller Site Contribution"</b>	means the sum of £975,130.00 (nine hundred and seventy-five thousand, one hundred and thirty pounds) which is payable in accordance with Schedule 9 to this Deed towards the provision and maintenance of a Traveller Site
<b>"Travellers and Travelling Showpeople"</b>	means travellers and travelling showpeople as defined in Annex 1 of 'Planning Policy for traveller sites' published by the Department for Communities and Local Government in August 2015 or such definition adopted in subsequent national planning policy
<b>"Traveller Site"</b>	means a site providing accommodation (not within the Land) for Travellers and Travelling Showpeople of up to 10 pitches as identified in the South Worcestershire Development Plan Policy SWDP 45/1ix or such other provision for Travellers and Travelling Showpeople approved by the District Council
<b>"Valuer"</b>	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a registered valuer appointed by the First Homes Owner and acting in an independent capacity
<b>"Working Day"</b>	means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory bank holiday or a day falling within the period 24 December to the immediately following 2nd January (inclusive)
<b>"Wychavon Council Allocations"</b>	means those Affordable Housing Dwellings to be allocated by Wychavon District Council in accordance with the Local Lettings Plan and the Housing Accord.
<b>"Wychavon District Council"</b>	means Wychavon District Council or any successor to its statutory functions
<b>"Wychavon Parish"</b>	means the parish of Norton Juxta Kempsey
<b>"Wychavon Parishes"</b>	means the parishes of Drakes Broughton with Pirton, Stoulton, and Whittington

## 2. CONSTRUCTION

- 2.1 Words of masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice-versa and words denoting persons shall include bodies companies incorporated associations and partnerships and vice versa

- 2.2 Reference to any statute or statutory provisions includes a reference to:-
- 2.2.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
  - 2.2.2 all statutory instruments or orders made pursuant to it whether before or after the date of this Deed
- 2.3 The terms "the Owner", and "the Chargee" shall include their respective assigns and successors in title to their legal interest in the Land or any part or parts thereof at the date hereof and to the rights and obligations created by this Deed
- 2.4 A covenant not to do something includes a covenant not to permit or suffer that thing to be done
- 2.5 Subject to clause 8.14, any covenants obligations or other commitments given by more than one party to this Deed shall be joint and several and where any party consists of two or more persons obligations expressed to be made by or with that party are deemed to be made by or with such persons jointly and severally
- 2.6 The headings in this Deed are for ease of reference only and cannot be taken into account in its interpretation
- 2.7 Where the agreement, consent, approval or expression of satisfaction (or anything of a like nature) from the District Council, Wychavon District Council, the City Council and / or the County Council are required by the Owner or any other party then such agreement, consent, approval or expression of satisfaction shall not be unreasonably or arbitrarily withheld or delayed
- 2.8 Where there is reference to an officer of the District Council or County Council in this Deed such reference shall include the officer referred to and any future officer (howsoever named) that carries on the same or similar function to the officer referred to AND any officer to whom such officers have delegated responsibility

### 3. HISTORY

- 3.1 The District Council, Wychavon District Council, and the City Council are the appropriate local planning authorities for the purpose of the 1990 Act in respect of the area which includes the Land
- 3.2 The District Council, Wychavon District Council, and the City Council are also the housing authorities for the purposes of the Housing Act and as such housing authorities are required by Section 8 of the Housing Act to consider housing conditions in its district and the needs of the district with respect to the provision of further housing accommodation
- 3.3 Wychavon District Council by its decision dated 8<sup>th</sup> February 2018 delegated its decision making functions in respect of the Development to the District Council

- 3.4 The City Council by its decision dated 22<sup>nd</sup> February 2018 delegated its decision making functions in respect of the Development to the District Council
- 3.5 The County Council is the strategic planning authority for the County of Worcestershire and is a local planning authority for the purposes of section 106 of the 1990 Act and is the Highway Authority as defined in the Highway Act 1980 for the area in which the Land is situated and by whom the obligations in the Deed in respect of highway matters are enforceable and Education Authority as defined in Section 12 of the Education Act 1996
- 3.6 The County Council in its capacity as highway authority has identified the need for works to the adopted highway as part of the Development and conditions are to be imposed on the Planning Permission in respect of these works
- 3.7 The First Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title nos. WR128037, HW182656, and WR138403
- 3.8 The Second Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title numbers WR34015, WR155836, WR199587, and HW124964
- 3.9 The Third Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number HW128443 and HW98174
- 3.10 The Fourth Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR99827 and WR128084 and has the benefit of an agreement dated 22<sup>nd</sup> December 2010 over the part of the Land owned by the First Owner under title number WR128037 granting a right of pre-emption
- 3.11 The Fifth Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title numbers WR101122 and WR129883
- 3.12 The Sixth Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR95300
- 3.13 The Seventh Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR145336
- 3.14 The Eighth Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR134022
- 3.15 The Ninth Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR122431
- 3.16 The Tenth Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR128126, being part of the land registered under that title number
- 3.17 The Eleventh Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR123784



- 3.18 The Twelfth Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR48608, being part of the land registered under that title number
- 3.19 The Thirteenth Owner is the freehold owner of that part of the Land registered with Title Absolute at the Land Registry under title number WR140383
- 3.20 The Chargee has the benefit of:
- 3.20.1 Registered charges dated 22<sup>nd</sup> December 2010 over the part of the Land owned by the First Owner under title number WR128037, and the part of the Land owned by the Fifth Owner, the Seventh Owner, the Eighth Owner, the Tenth Owner, and the Thirteenth Owner
- 3.20.2 A registered charge dated 3<sup>rd</sup> November 2011 over the part of the Land owned by the First Owner under title numbers HW182656, and WR138403
- 3.20.3 A registered charge dated 8 September 2020 over the part of the Land owned by the Second Owner under title number WR34015
- 3.20.4 Registered charges dated 7 July 2021 over the part of the Land owned by the Third Owner under title number HW128443 and HW98174
- 3.20.5 An option agreement dated 30<sup>th</sup> May 2013 over the part of the Land owned by the Second Owner under title number HW124964, WR155836, and WR199587, and over the part of the Land owned by the Twelfth Owner
- 3.20.6 A registered charge dated 29<sup>th</sup> December 2014 over the part of the Land owned by the Fourth Owner
- 3.20.7 A registered charge dated 27<sup>th</sup> December 2012 over the part of the Land owned by the Sixth Owner
- 3.20.8 A registered charge dated 14 February 2020 over the part of the Land owned by the Ninth Owner
- 3.20.9 A registered charge dated 24<sup>th</sup> November 2011 over the part of the Land owned by the Eleventh Owner
- 3.21 The District Council, Wychavon District Council, the City Council, the County Council, the Owner, and the Chargee are entering into this Deed to make provision for regulating the Development in manner hereinafter appearing
- 3.22 The Owner and the Chargee have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the District Council, Wychavon District Council, the City Council, and the County Council against the Owner and the Chargee.

4. **PLANNING OBLIGATIONS**

The covenants contained in Schedules 1-11 (inclusive) to this Deed are planning obligations for the purposes of Section 106 of the 1990 Act

**NOW THIS DEED WITNESSETH as follows:**

5. **BINDING EFFECT OF THE AGREEMENT**

- 5.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Sections 8 and 9 of the Housing Act and all other enabling powers and it and the covenants contained in it are enforceable by the District Council, Wychavon District Council, the City Council, and the County Council pursuant to such Acts
- 5.2 Subject to Clauses 8.14 to 8.18 (inclusive) the Owner in respect of the Land hereby covenants and undertakes in respect of each and every part of the Land to observe and perform the covenants which are contained in Schedules 1-11 (inclusive) to this Deed with the intent that the same shall bind the Land and be enforceable without limit of time not only against the Owner but also against each and any of their successors in title and any person claiming any legal or equitable estate or interest in the Land or any part or parts of it as if that successor and person had also been an original covenanting party

6. **EFFECTIVE DATE**

- 6.1 The provisions of this Deed shall come into effect upon the date of the grant of Planning Permission with the exception clauses 1-3, 5.1, 6.1, 7-15 (inclusive) and 6.2 (below in respect of paragraphs 1 to 8 of Schedule 10) which shall come into effect upon the date hereof
- 6.2 For the purposes of Schedule 10, paras 1-8 and Schedule 5 paragraphs 1 to 3, the provisions of this Deed shall come into effect upon the date hereof.

7. **WARRANTIES**

- 7.1 The First Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:
- 7.1.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR128037, HW182656, and WR138403 free from any encumbrances other than those noted in the following Land Registry official copy of the register:
- (a) WR128037 of 02 September 2021 at 16:31:04;
  - (b) HW182656 of 02 September 2021 at 16:21:50;
  - (c) WR138403 of 02 September 2021 at 16:33:46;

- 7.1.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder
- 7.1.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.1.1 above, between 02 September 2021 and the date hereof
- 7.2 The Second Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of that part of the Land referred to in sub-clauses 7.2.1, 7.2.2, and 7.2.3 below:
- 7.2.1 they are at the date of this Deed seised in fee simple of the Land and entitled to be registered as proprietor with Title Absolute at the Land Registry under title nos. WR34015, HW124964, WR199587, and WR155836 and their ownership is free from any encumbrances other than those noted in the following Land Registry official copies of the register:
- (a) WR34015 of 05 November 2021 at 09:10:09;
  - (b) HW124964 of 05 November 2021 at 08:20:12;
  - (c) WR199587 of 05 November 2021 at 08:24:59
  - (d) WR155836 of 11 October 2021 at 18:01:57
- 7.2.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder
- 7.2.3 there have been no dealings with the part of Land registered at the Land Registry under:
- (a) title number WR34015 between 5 November 2021 and the date hereof;
  - (b) title number HW124964 between 5 November 2021 and the date hereof;
  - (c) title number WR199587 between 5 November 2021 and the date hereof; or
  - (d) title number WR155836 between 11 October 2021 and the date hereof;
- 7.3 The Third Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:
- 7.3.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. HW128443 and HW98174 free

from any encumbrances other than those noted in the following Land Registry official copy of the register:

(a) HW128443 of 14 January 2022 at 15:10:01;

(b) HW98174 of 22 March 2022 at 09:41:14;

7.3.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder

7.3.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.3.1 above between 14<sup>th</sup> January 2022 for title number HW128443 and 22 March 2022 for title number HW98174 and the date hereof

7.4 The Fourth Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:

7.4.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR99827 and WR128084 free from any encumbrances other than those noted in the following Land Registry official copy of the register:

(a) WR99827 of 02 September 2021 at 16:25:21;

(b) WR128084 of 11 October 2021 at 18:05:17;

7.4.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder

7.4.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.4.1 above between 2 September 2021 and the date hereof in respect of WR99827 and 11 October 2021 and the date hereof in respect of WR128084

7.5 The Fifth Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:

7.5.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR101122 and WR129883 free from any encumbrances other than those noted in the following Land Registry official copy of the register:

(a) WR101122 of 02 September 2021 at 16:27:12;

- (b) WR129883 of 11 October 2021 at 18:07:36;
- 7.5.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder
- 7.5.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.5.1 above between 2 September 2021 and the date hereof in respect of WR101122 and 11 October 2021 and the date hereof in respect of WR129883
- 7.6 The Sixth Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:
- 7.6.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR95300 free from any encumbrances other than those noted in the following Land Registry official copy of the register:
- (a) WR95300 of 11 October 2021 at 18:09:51;
- 7.6.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder
- 7.6.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.6.1 above between 11 October 2021 and the date hereof
- 7.7 The Seventh Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:
- 7.7.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR145336 free from any encumbrances other than those noted in the following Land Registry official copy of the register:
- (a) WR145336 of 11 October 2021 at 18:11:27;
- 7.7.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder

- 7.7.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.7.1 above between 11 October 2021 and the date hereof
- 7.8 The Eighth Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:
- 7.8.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR134022 free from any encumbrances other than those noted in the following Land Registry official copy of the register:
- (a) WR134022 of 11 October 2021 at 18:13:21;
- 7.8.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder
- 7.8.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.8.1 above between 11 October 2021 and the date hereof
- 7.9 The Ninth Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:
- 7.9.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR122431 free from any encumbrances other than those noted in the following Land Registry official copy of the register:
- (a) WR122431 of 20 January 2022 at 08:39:33 other than:
- (i) The transfer of title WR122431 to the Ninth Owner on 13 February 2020; and
- (ii) The grant of a charge to the Chargee dated 14 February 2020;
- 7.9.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder
- 7.9.3 there have been no dealings with the part of Land registered at the Land Registry under the title number set out at clause 7.9.1 above between 20 January 2022 and the date hereof other than those listed at clause 7.9.1(a)(i) and (ii) and there are no parties with any interest in the part of the Land within these titles other than the Ninth

Owner, the Chargee, and as noted within the Charges Register of the official copies of the registers listed at clause 7.9.1 above

7.10 The Tenth Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:

7.10.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR128126 free from any encumbrances other than those noted in the following Land Registry official copy of the register:

(a) WR128126 of 11 October 2021 at 18:16:11;

7.10.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder

7.10.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.10.1 above between 11 October 2021 and the date hereof

7.11 The Eleventh Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:

7.11.1 they remain at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR123784 free from any encumbrances other than those noted in the following Land Registry official copy of the register:

(a) WR123784 of 11 October 2021 at 18:17:42;

7.11.2 they have obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that they enter into this Deed with full capacity and ability to observe and perform the obligations hereunder

7.11.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.11.1 above between 11 October 2021 and the date hereof

7.12 The Twelfth Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of that part of the Land referred to at clauses 7.12.1, 7.12.2, and 7.12.3 below:

7.12.1 she remains at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR48608 free from any

encumbrances other than those noted in the following Land Registry official copy of the register:

(a) WR48608 of 11 October 2021 at 18:24:48;

7.12.2 she has obtained all necessary permissions and consents required from any covenantees or any other persons to them entering into this Deed and that she enters into this Deed with full capacity and ability to observe and perform the obligations hereunder

7.12.3 there have been no dealings with the part of Land registered at the Land Registry under the title number set out at clause 7.12.1 above between 11 October 2021 and the date hereof

7.13 The Thirteenth Owner hereby warrants to the District Council, Wychavon District Council, the City Council, and the County Council that in respect of the Land:

7.13.1 it remains at the date of this Deed seised in fee simple of the Land registered with Title Absolute at the Land Registry under title nos. WR140383 free from any encumbrances other than those noted in the following Land Registry official copy of the register:

(a) WR140383 of 02 September 2021 at 16:35:49; and

7.13.2 it has obtained all necessary permissions and consents required from any covenantees or any other persons to it entering into this Deed and that it enters into this Deed with full capacity and ability to observe and perform the obligations hereunder

7.13.3 there have been no dealings with the part of Land registered at the Land Registry under the title numbers set out at clause 7.13.1 above between 2 September 2021 and the date hereof

## **8. DECLARATIONS**

### **IT IS HEREBY AGREED AND DECLARED**

8.1 The planning obligations on the part of the Owner shall be in addition to and not in derogation of the Planning Permission

8.2 Nothing in this Deed shall be construed as restricting the exercise by the District Council, Wychavon District Council, the City Council or the County Council of any powers exercisable by it under the 1990 Act or any other Act regulation or byelaws

8.3 This Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been at any time issued by the District Council or any other appropriate person or authority pursuant to the provisions of the 1990 Act



- 8.4 Subject only to clause 14 and the provisions of Sections 106A and 106B of the 1990 Act the terms and conditions of this Deed can only be varied by a supplemental deed
- 8.5 No waiver whether express or implied by the District Council, Wychavon District Council, the City Council and / or the County Council of any breach or default by the Owner in performing or observing any of the covenants of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council, Wychavon District Council, the City Council and / or the County Council from enforcing any of the said covenants or from acting upon any subsequent breach or default in respect thereof by the Owner
- 8.6 The Owner waives any rights to claim compensation arising from any limitation or restriction on the planning use of the Land under the terms of this Deed
- 8.7 If the Planning Permission at any time is quashed or revoked or is otherwise withdrawn by any statutory procedure or expires before Commencement of the Development this Deed shall cease to have effect
- 8.8 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it
- 8.9 If any individual clause or paragraph in this Deed is subsequently held to be unenforceable by a court the parties agree that the offending clause or paragraph shall cease to be binding and will be severed from this Deed PROVIDED THAT the severing of such a clause or paragraph shall not affect the continuing enforceability of the remainder of this Deed
- 8.10 The validity construction and performance of this Deed shall be governed by English law and each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Deed
- 8.11 Other than the provisions of paragraph 6 of Schedule 4 relating to the obligation to pay the Service Charge notwithstanding anything to the contrary contained or referred to elsewhere in this Deed nothing in this Deed shall be binding on nor enforceable against;
- 8.11.1 A Protected Tenant (including their Mortgagee) nor against anyone deriving title from any of them and
- 8.11.2 A mortgagee or chargee or receiver of a Registered Provider (as defined in Clause 13 of this Deed) which has first complied with the requirements of Clause 13.2 of this Deed and
- 8.11.3 A FH Mortgagee which has first complied with the requirements of paragraph 4 of Part 1B of Schedule 1 to this Deed
- 8.11.4 A Registered Provider complying with any statutory or contractual rights of a Protected Tenant to acquire the freehold in any Affordable Housing Dwellings
- 8.11.5 The successors in title to all of the foregoing including any Mortgagee lender or chargee to any such successors in title

And for the avoidance of doubt this Clause 8.11 shall not apply to anyone exercising a voluntary right to buy an Affordable Housing Dwelling and such Affordable Housing Dwellings shall continue to be bound by this Deed

- 8.12 Notwithstanding anything to the contrary contained or referred to elsewhere in this Deed the provisions of Schedule 1 of this Deed shall not be enforceable against the owner occupiers tenants or mortgagees of the General Market Dwellings constructed pursuant to the Planning Permission and purchased and occupied as private dwellings nor their successors in title so as to require them to construct or procure the construction and completion of the Affordable Housing Dwellings
- 8.13 The provisions of Schedules 2-11 (inclusive) of this Deed shall not be binding on any occupier tenant or lessee of an Affordable Housing Dwelling or any Mortgagee or successor in title of the foregoing
- 8.14 No person shall be liable for a breach of this Deed:
  - 8.14.1 after he shall have parted with all interest in the Land or in that part of the Land in respect of which such breach occurred but without prejudice to liability for any subsisting breach which occurred prior to parting with such interest; and
  - 8.14.2 to the extent that such breach relates to a part of the Land in which that person has no interest provided that where:
    - 8.14.2.1 such breach relates to a failure to comply with an obligation in this Deed prior to the occupation of a specified number of Dwellings nothing in this clause shall prevent the District Council, the City Council, Wychavon District Council or the County Council enforcing against such breach of this Deed by way of restraining Occupation of Dwellings in excess of the said specified number on any part of the Land;
    - 8.14.2.2 an obligation requires the payment of a sum of money on or prior to the Occupation of a specified number of Dwellings, the requirement to make payment of the relevant sum of money can be enforced against such parts of the Land which are not comprised within an Agricultural Parcel
- 8.15 Statutory undertakers or other utility suppliers with an interest in the Land only by virtue of the location of their structures or other apparatus on the Land (including electricity substations, poles stays gas governor stations and/or pumping stations) are specifically excluded from liability under this Deed
- 8.16 Neither the County Council nor its successors in title and assigns of the Primary School Site shall be liable for any breach of this Deed by virtue of holding an interest in any part of the Primary School Site as a result of the operation of this Deed but without any liability of the County Council to comply with any obligations expressly given by the County Council in this Deed BUT FOR THE AVOIDANCE OF DOUBT the owners and operators of the Primary School Site shall continue to be bound by the provisions of any Community Use Agreement agreed pursuant to Schedule 15 paragraph 6

- 8.17 Neither the Management Organisation nor its successors in title and assigns of the Community Facilities shall be liable for any breach (including antecedent breaches) of this Deed by virtue of holding an interest in any part of the Community Facilities but without any prejudice to the liability of the Management Organisation to comply with the ongoing Community Facilities maintenance and management obligations in paragraphs 3 and 5 of Schedule 4, and ongoing On Site Public Open Space maintenance and management obligations in paragraph 12 of Part 1 of Schedule 8 which shall be binding against the Management Organisation as soon as the relevant Community Facility has been transferred to the Management Organisation and which shall bind the Community Facilities including successors in title and assigns of the Management Organisation in perpetuity
- 8.18 Neither the Twelfth Owner nor her successors in title and assigns of the part of the Land registered within title number WR48608 at the date of this Deed shall be liable for any breach of this Deed by virtue of holding an interest in the part of the Land registered within title number WR48608 at the date of this Deed UNLESS AND UNTIL the Development is Commenced on that part of the Land (and liability for any breach to this Deed shall not apply to such part of the Land registered within title number WR48608 on which Development has not Commenced) BUT FOR THE AVOIDANCE OF DOUBT any works to install or maintain drainage systems required for the Development shall not constitute the Commencement of Development for the purposes of this clause 8.18 only
- 8.19 The District Council covenants with the Owner as set out in Schedule 12 and covenants with Wychavon District Council and City Council to use reasonable endeavours to agree the Local Lettings Plan with Wychavon District Council and City Council within 28 Working Days of receiving notification of the expected date of first Occupation of the first Affordable Housing Dwelling and further covenants with the City Council as set out in paragraph 6 of Schedule 12
- 8.20 Wychavon District Council covenants with the Owner as set out in Schedule 13 and covenants with the District Council and City Council to use reasonable endeavours to agree the Local Lettings Plan with the District Council and City Council within 28 Working Days of receiving notification of the expected date of first Occupation of the first Affordable Housing Dwelling
- 8.21 The City Council covenants with the Owner as set out in Schedule 14 and covenants with the District Council and Wychavon District Council to use reasonable endeavours to agree the Local Lettings Plan with the District Council and Wychavon District Council within 28 Working Days of receiving notification of the expected date of first Occupation of the first Affordable Housing Dwelling and further covenants with the District Council to use reasonable endeavours to agree the Affordable Housing provisions required in paragraphs 1, 2, 3, and 12 of Schedule 1 with the District Council within 28 Working Days of consultation
- 8.22 The County Council covenants with the Owner and the District Council as set out in Schedule 15.
- 8.23 In relation to the:

8.23.1 Third Party to this Deed the liability of the trustees under this Deed is limited to the assets of the Aldersley Grandchildrens Settlement at the date of any claim less the amount of any prior claim under this Deed and costs incidental thereto.

8.23.2 <sup>owner</sup> Fourth Party to this Deed the liability of the trustees under this Deed is limited to the assets of the JF Aldersey Dec'd Trust and the PL Aldersey Dec'd Trust (as relevant) at the date of any claim less the amount of any prior claim under this Deed and costs incidental thereto.

#### 9. NOTICE OF DEED

9.1 The District Council, Wychavon District Council, and the City Council will on completion of this Deed register it in their respective Local Land Charges Registers pursuant to the provisions of the Local Land Charges Act 1975

#### 10. COSTS OF PREPARATION OF AGREEMENT

10.1 The Owner covenants to pay the District Council's reasonable and proper legal costs in relation to this Deed prior to the date hereof

10.2 The Owner covenants to pay the District Council its monitoring and administrative fees prior to the date hereof in the sum of Three Thousand Five Hundred Pounds (£3,500.00)

10.3 The Owner covenants to pay Wychavon District Council's reasonable and proper legal costs in relation to this Deed on the date hereof

10.4 The Owner covenants to pay the City Council's reasonable and proper legal costs in relation to this Deed on the date hereof

10.5 The Owner covenants to pay the County Council's reasonable and proper legal costs in relation to this Deed on the date hereof

10.6 The Developer covenants to pay the County Council's reasonable surveyor costs of £7,500 on the date hereof

10.7 The Owner covenants to pay the County Council its monitoring and administrative fees prior to the date hereof in the sum of ten thousand Pounds (£10,000)

#### 11. DISPUTES

11.1 In the event of there being any dispute between the parties hereto in respect of any of the terms of this Deed such dispute shall be determined in accordance with this Clause and either party to the dispute may at any time require by notice in writing to the other party to the dispute an independent expert to be appointed to resolve the dispute

11.2 The expert (who shall be an appropriately qualified person to resolve the dispute in question) may be agreed upon by the parties to the dispute and in default of such agreement within

one month of a requirement being made pursuant to this Clause shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either party to the dispute made at any time after the said period of one month

- 11.3 Notice in writing of his appointment shall be given by the expert to the parties to the dispute and he shall invite each to submit within a specified period (which will not exceed four weeks) any written representations each wishes to make to him
- 11.4 The expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgment
- 11.5 The expert shall give notice in writing of his decision to the parties to the dispute within 2 months of his appointment or within such extended period as the parties may together allow
- 11.6 The decision of the expert shall be final on all matters referred to him save in the case of manifest error
- 11.7 If for any reason the expert shall fail to make a decision and give notice thereof within the time and in the manner herein before provided either party to the dispute may apply to the President of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary
- 11.8 Each party to the dispute shall bear its own costs save that the fees of the expert and of the Royal Institution of Chartered Surveyors shall be in the expert's determination
- 11.9 Nothing in this Clause shall be construed as ousting the jurisdiction of the courts to enforce the provisions of this Deed

## 12. NOTICES

- 12.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post or recorded delivery post
- 12.2 The address for service of any such notice consent or approval as aforesaid shall in the case of service upon the District Council, Wychavon District Council, City Council and the County Council be at the address aforesaid or such other address for service as shall have been previously notified by the District Council, Wychavon District Council, City Council or the County Council to the Owner and in the case of service upon the Owner, and the Chargee will be at their last known address (if an individual) or then current registered office (if a company)
- 12.3 A notice consent or approval under this Deed shall be deemed to have been served as follows:
  - 12.3.1 If personally delivered at the time of delivery; and

- 12.3.2 If posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

And in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or recorded delivery envelope (as appropriate) as the case may be

### 13. MORTGAGEE PROTECTION

- 13.1 For the avoidance of doubt, this clause 13 applies only to the mortgagee or chargee or receiver of a Registered Provider and this provision shall not apply in respect of an FH Mortgagee.

- 13.2 The affordable housing provisions in 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 Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or receiver PROVIDED THAT:

- 13.2.1 such mortgagee or chargee or receiver shall first give written notice to the Head of Legal Services at the District Council of its intention to dispose of the Affordable Housing 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 Housing Dwelling(s) to another Registered Provider or to the District Council, City Council, and Wychavon District Council for a consideration not less than the amount due and monies outstanding under the terms of the relevant security documentation, including all accrued principal monies, interest and costs and expenses; and

- 13.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee and receiver shall be entitled to dispose of its Affordable Housing Dwelling(s) free from the affordable housing provisions in this Deed, which provisions shall determine in respect of those Affordable Housing Dwellings absolutely.

### 14. SECTION 73 VARIATION

- 14.1 In the event that any new planning permission(s) are granted by the District Council, Wychavon District Council and / or City Council pursuant to Section 73 of the 1990 Act or any variation or release of any condition under S96A in relation to the Planning Permission and unless otherwise agreed between the parties, with effect from the date that the new planning permission is granted pursuant to Section 73 of the 1990 Act:

- 14.1.1 The obligations in this Deed shall (in addition to continuing to bind the Land in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Land granted pursuant to Section 73 of the 1990 Act and the Land

itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the 1990 Act;

14.1.2 The definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s); and

14.1.3 This Deed shall be endorsed with the following words in respect of any future Section 73 application:

*"The obligations in this Deed relate to and bind the Land in respect of which a new planning permission reference [ ] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"*

ALWAYS PROVIDED THAT nothing in this clause shall fetter the discretion of the District Council and / or City Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations insofar as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the 1990 Act.

#### 15. CHARGEES'S CONSENT

15.1 The Chargee hereby consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed as if it had been executed and registered as a local land charge prior to the creation of the Chargee's interest in the Land and that the security of the charge over the Land shall take effect subject to his Deed PROVIDED THAT the Chargee (and any subsequent chargee with an interest in the Land) shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

## SCHEDULE 1

### PART 1A Affordable Housing

The Owner covenants with the District Council, Wychavon District Council, and City Council as follows:

1. Prior to the submission of the first Reserved Matters Application for the first Phase of the Development to submit and obtain the District Council's approval to the Affordable Housing Phasing Plan and for the avoidance of doubt Commencement of Development shall not take place until such time as the Affordable Housing Phasing Plan has been approved by the District Council (such approval not to be provided without prior approval of the City Council) AND FOR THE AVOIDANCE OF DOUBT the Affordable Housing Phasing Plan shall provide that a minimum of 20% (twenty per cent) of the Dwellings within the Development are provided as Affordable Housing Dwellings
2. With or prior to the submission of the first Reserved Matters Application for each Phase to submit to the District Council the Affordable Housing Scheme for that Phase for approval PROVIDED THAT
  - 2.1 where an Affordable Housing Scheme contains less than 20% Affordable Housing or an Affordable Housing tenure split other than 70% Social Rented Units and 25% First Home Units 5% Intermediate Housing Units the Owner shall provide to the District Council alongside the Affordable Housing Scheme an explanation as to how the delivery of the Affordable Housing Scheme will not prejudice the delivery of the obligation in paragraph 1 of this Schedule
  - 2.2 in all instances within each Reserved Matters Application a minimum of 15% of the Dwellings within that Phase are to be Affordable Housing
3. Not to Commence the Development on a Phase until an Affordable Housing Scheme for that Phase has been submitted to and approved by the District Council.
4. To construct and lay out the Affordable Housing Dwellings in accordance with the approved Affordable Housing Scheme for that Phase and the provisions of this Schedule 1
5. The Owner will or will procure the construction and Completion at their own cost and expense of 100% of the Affordable Housing Dwellings on each Phase together with all necessary services connections and infrastructure ready for Occupation prior to Occupation of fifty per cent (50%) of the General Market Dwellings on the corresponding Phase
6. Completion of the Affordable Housing Dwellings shall be deemed to be either when the NHBC Buildmark Certificate (or similar equivalent) shall have been issued in respect of all of the Affordable Housing Dwellings or when the local authority building control consultancy or approved inspector certifies them all complete if earlier



7. Not to sublet or otherwise part with possession of the whole or any part of the Affordable Housing Dwellings unless in accordance with the provisions of this Deed and to ensure that all of the Affordable Housing Dwellings are sold and/or leased and/or occupied in accordance with this Deed and in accordance with the Local Lettings Plan and for the District Council Allocations and Wychavon Council Allocations in accordance with the timescales and arrangements set out in the document entitled 'Allocation of Affordable Housing Dwellings' appended to this Deed at Appendix 1
8. Not to allow fifty percent (50%) or more of the General Market Dwellings on each Phase to be Occupied until there has been a freehold transfer or grant of a long headlease of all of the Affordable Housing Dwellings on that Phase to a Registered Provider (or in the case of First Home Units to a purchaser meeting the requirements of Part 1B of this Schedule 1) subject to the terms of this Deed together with rights being granted over all access roads and footpaths services and conducting media serving the Affordable Housing Dwellings and appropriate written evidence thereof is provided to the reasonable satisfaction of the Head of Legal Services at the District Council and the Corporate Director Planning and Governance at the City Council
9. Not to allow the Affordable Housing Dwellings (save for First Home Units in respect of which Part 1B of this Schedule 1 shall apply) to be occupied otherwise than by a person who at the date of his first Occupation is a Qualifying Resident (together with members of his immediate family) in accordance with the Qualifying Resident requirements of the District Council Allocations, Wychavon Council Allocations, or City Council Allocations relevant for that Affordable Housing Dwelling who occupies the Affordable Housing Dwelling as his sole residence
10. Not initially to dispose of any of the Affordable Housing Dwellings (save for First Home Units in respect of which Part 1B of this Schedule 1 shall apply) otherwise than by way of a mortgage or charge or to a Registered Provider by way of a freehold transfer or grant of a long headlease interest for the purposes of providing Affordable Housing Dwellings
11. To give notice in writing to the Head of Legal Services at the District Council, Wychavon District Council and City Council of the following dates in relation to each and every Phase:
  - (a) the expected date of first Occupation of the first Affordable Housing Dwellings on that Phase at least 6 months prior to such expected date
  - (b) completion of the freehold sale or grant of a long headleasehold interest in the Affordable Housing Dwellings
  - (c) the expected date of first Occupation of fifty percent (50%) of the General Market Dwellings on that Phase at least 3 weeks prior to such expected date
12. If the Development is one which will involve the creation or employment of a management company there shall be a management company for all of the common parts which serve all

the Dwellings but provided always for the sake of clarity nothing in this Deed shall operate so as to prevent or prohibit the Affordable Housing Dwellings (save for First Home Units) from being exclusively owned and managed by the Registered Provider (which has acquired such Dwellings) and provided further that details of such management arrangements shall be submitted to the Head of Legal Services at the District Council prior to the transfer of any Affordable Housing Dwellings to a Registered Provider and agreed in writing by the Head of Legal Services at the District Council (such agreement not to be unreasonably withheld or delayed save that agreement shall not be given without the prior approval of the City Council, acting reasonably) at least 2 months prior to Occupation of any Affordable Housing Dwelling

13. Not to charge an occupier of any of the Affordable Housing Dwellings (save for First Home Units) a service charge, including the Service Charge) unless details of all items covered under the service charge or Service Charge have been submitted to the Head of Housing Services of the District Council or Wychavon District Council, or Head of Homes and Communities of the City Council (as appropriate for the location of the Phase) at least two months prior to Occupation of any Affordable Housing Dwelling on that Phase and have been approved in writing by the relevant Head of Housing Services of the District Council, City Council or Wychavon District Council (such agreement not to be unreasonably withheld or delayed such approval not to be provided without prior approval from such of the City Council, District Council, and Wychavon District Council who will be allocating Affordable Housing Dwellings within the said Phase) PROVIDED THAT in the event that the payment of the Service Charge or part thereof is deemed by the District Council, Wychavon District Council, or City Council (acting reasonably) to be unaffordable for the occupiers of the Affordable Housing Dwellings the payment of the Service Charge (or part thereof deemed to be unaffordable) shall be charged to and be payable by the Registered Provider to ensure the Management Organisation receives the Service Charge for each Affordable Housing Dwelling.
14. If the Registered Provider at any time while having a legal interest in the Affordable Housing Dwellings ceases to be accredited or approved by the Homes and Communities Agency (now known as Homes England) or its equivalent successor body
  - 14.1 To give notice immediately in writing to the Head of Legal Services at the District Council and Wychavon District Council and Corporate Director Planning and Governance at the City Council of the cessation of accreditation or approval; and
  - 14.2 To transfer all legal interest in the Affordable Housing Dwellings of that Registered Provider to another Registered Provider subject to the provisions of this Deed
  - 14.3 A Registered Provider that has ceased to be accredited or approved by the Homes and Communities Agency (now known as Homes England) may dispose of its freehold or long headleasehold interest in the Affordable Housing Dwellings subject to any subsisting leases and the terms of the Deed but otherwise free from the terms of paragraph 14.2 above and thereupon the provisions of paragraph 14.2 above shall

become null and void but only in respect of that particular transfer of that or those Affordable Housing Dwellings PROVIDED THAT

- 14.3.1 The Registered Provider notifies the Head of Legal Services at the District Council and Wychavon District Council and the Corporate Director Planning and Governance at the City Council in writing that it is seeking a purchaser of its freehold or long headleasehold interest in the Affordable Housing Dwellings AND
  - 14.3.2 The Registered Provider thereafter uses reasonable endeavours to sell and transfer its freehold interest or long headleasehold interest in the Affordable Housing Dwellings to a new Registered Provider subject to the terms of this Deed including the terms of this paragraph 14 at a price equal to its market value taking into account the existence of the Deed AND
  - 14.3.3 At least four months have elapsed since the said Head of Legal Services at the District Council and Wychavon District Council and the Corporate Director Planning and Governance at the City Council received the written notice referred to at paragraph 14.3.1 above and a contract for the disposal of the freehold or long headleasehold in the relevant Affordable Housing Dwellings has not been exchanged with a new Registered Provider (or completion effected where there is to be no exchange of contracts) despite the current Registered Provider's reasonable efforts to sell and transfer its freehold interest or long headleasehold interest during this period such efforts being evidenced in writing to the satisfaction of the Head of Legal Services at the District Council and Wychavon District Council and Corporate Director Planning and Governance at the City Council
15. Until such time as the Affordable Housing Dwellings are transferred pursuant to paragraph 14 of this Schedule 1 not to increase the rent or Service Charge of the Affordable Housing Dwellings above the levels prevalent at the time that the Registered Provider ceased to be approved or accredited without the prior written consent of the District Council (such consent not to be unreasonably withheld or delayed)
16. In the event that a tenant or other occupier of a Social Rented Unit exercises the right to buy under applicable legislation to procure that any Registered Provider shall unless the legislation otherwise requires use or procure the use of the net proceeds of sale as defined in section 24(3) of the Housing Act 1996 (prior to its revocation) to fund the provision of further Affordable Housing and to make such provision within the District of Malvern Hills and/or the City of Worcester and/or the District of Wychavon.
17. Not to permit the purchase of the freehold of any Affordable Housing Dwellings (excluding First Home Units) pursuant to any voluntary right to buy or acquire or other similar or equivalent initiative or right available from time to time or by the purchase of 100% of the equity in a Shared

Ownership Dwelling and to retain all of the Affordable Housing Dwellings as Affordable Housing in perpetuity

**18. Shared Ownership Housing Unit Buy Back**

18.1 This paragraph 18 applies to a Registered Provider, landlord and the lessee of any Shared Ownership Dwelling

18.2 The Registered Provider, landlord and lessee (from time to time) of any given Shared Ownership Dwelling shall throughout the duration of that lease observe and perform their respective obligations stipulations rights and covenants contained in the HCA Model Protected Area Lease

18.3 Where a lessee of any Shared Ownership Dwelling wishes to acquire more than 80% of the freehold equity to this Dwelling and wishes to sell the equity in this Dwelling then;

18.3.1 the Registered Provider or landlord (as the case may be) shall notify the District Council's Head of Housing Services (in the case of the District Council's Allocations), Wychavon District Council's Head of Housing Services (in the case of the Wychavon Council Allocations) and/or the City Council's Housing Enabling and Options Manager (in the case of the City Council's Allocations) in writing of the lessee's intention to sell its equity in the Shared Ownership Dwelling; and

18.3.2 without prejudice to paragraph 18.2 of this Schedule shall comply fully with the mandatory buy back provisions, obligations and procedures contained in the HCA Model Protected Area Lease

**PART 1B: FIRST HOMES OBLIGATIONS**

**1. APPEARANCE AND DEVELOPMENT STANDARD**

1.1 The First Homes Units shall not be visually distinguishable from the General Market Dwellings based upon their external appearance

1.2 The internal specification of the First Homes Units shall not by reason of their being First Homes be inferior to the internal specification of the equivalent General Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes Units shall be permitted

1.3 The size of Clusters and shared access arrangements for First Homes Units which are flats in blocks shall be agreed in writing with the District Council (such approval not to be provided without prior approval of the City Council) as part of the Affordable Housing Scheme

1.4 All First Homes Units shall be constructed to:

- (a) the Development Standard current at the time of the relevant reserved matters approval; and
- (b) no less than the standard applied to the General Market Dwellings.

## 2 DELIVERY MECHANISM

2.1 The First Homes Units shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

2.1.1 the Eligibility Criteria (National); and

2.1.2 the Eligibility Criteria (Local) (if any).

2.2 If after a First Homes Unit has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior the First Homes Units being Completed) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 2.1.2 of this Part 1B shall cease to apply.

2.3 Subject to paragraphs 2.6 to 2.10 of this Part 1B no First Homes Unit shall be FH Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price (meaning the Discount Market Price) is funded by a first mortgage or other home purchase plan with a FH Mortgagee.

2.4 No First Homes Unit shall be FH Disposed of (whether on a first or any subsequent sale) unless and until:

2.4.1 The District Council, Wychavon District Council or the City Council (as the case may be) has been provided with evidence that:

2.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 2.2 of this Part 1B applies meets the Eligibility Criteria (Local) (if any);

2.4.1.2 the First Homes Unit is being FH Disposed of as a First Home at the Discount Market Price; and

2.4.1.3 the transfer of the First Homes Unit includes:

a) a definition of the "Council" which shall be either the District Council, Wychavon District Council and the City Council as appropriate

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 2.1 - 2.9 (inclusive) of Part 1B of the First Schedule of the S106

Agreement a copy of which is attached hereto as the Annexure."

- c) A definition of "S106 Agreement" in the following terms:

"means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [●] made between (1) Malvern Hills District Council; (2) Wychavon District Council (3) Worcester City Council (4) Worcestershire County Council (5) Welbeck Strategic Land (Worcester) LLP (6) Misters Bros Limited (7) Daniel Walter Aldersey, Charlotte Louise Aldersey, Karen Jayne Aldersey and Rebecca Widdowson (8) James Laughton Aldersey, Martin Armsden Thomas and Anthony Nimrod Champion (9) Colin Robert Anstey and Jane Rozanne Anstey (10) Grace Maria Jones (11) Prudence Lilian Margaret Smeeton (12) Charles Peter Randall (13) Sally Elizabeth King and James Alexander King (14) Matthew John Brereton (15) Margaret Ann Dovey, Sally Ann Morrall and Alison Lois Dovey (16) Kerry Misters (17) David Frank Smith, and (18) Welbeck Strategic Land LLP as may be amended / supplemented from time to time"

- d) a provision that the Land is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise FH Dispose of the Land or any part of it other than in accordance with the First Homes Provisions; and

- e) a copy of the First Homes Provisions in an Annexure

2.4.2 The District Council, Wychavon District Council or the City Council (as the case may be) has issued the Compliance Certificate

- 2.5 On the first FH Disposal of each and every First Homes Unit to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Homes Unit of the following restriction:

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause [●] (the First Homes provision) of the*

*Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"*

- 2.6 The owner of a First Homes Unit (which for the purposes of this paragraph shall include the Owner and any First Homes Owner) may apply to the District Council, Wychavon District Council or the City Council (as the case may be) to FH Dispose of it other than as a First Home on the grounds that either:
- 2.6.1 the First Homes Unit has been actively marketed as a First Home for six (6) months in accordance with paragraphs 2.1 and 2.2 (and in the case of a first FH Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior the First Home Unit being Completed) and all reasonable endeavours have been made to FH Dispose of the First Homes Unit as a First Home but it has not been possible to FH Dispose of that First Homes Unit as a First Home in accordance with paragraphs 2.3 and 2.4.1 of this Part 1B of this Schedule; or
  - 2.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 2.6.1 of this Part 1B before being able to FH Dispose of the First Homes Unit other than as a First Home would be likely to cause the First Homes Owner undue hardship.
- 2.7 Upon receipt of an application served in accordance with paragraph 2.6 of this Part 1B of this Schedule the District Council, Wychavon District Council or the City Council (as the case may be) shall have the right (but shall not be required) to direct that the relevant First Homes Unit is FH Disposed of to it at the Discount Market Price.
- 2.8 If the District Council, Wychavon District Council or the City Council (as the case may be) is satisfied that either of the grounds in paragraph 2.6 of this Part 1B of this Schedule above have been made out it shall confirm in writing within twenty eight (28) Working Days of receipt of the written request made in accordance with paragraph 2.6 of this Part 1B that the relevant First Homes Unit may be FH Disposed of:
- 2.8.1 to the District Council, Wychavon District Council or the City Council (as the case may be) at the Discount Market Price; or
  - 2.8.2 (if the District Council, Wychavon District Council or the City Council (as the case may be) confirms that it does not wish to acquire the relevant First Homes Unit) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that First Homes Unit apart from paragraph 2.10 of this Part 1B of this Schedule which shall cease to apply on receipt of payment by the District Council, Wychavon District Council or the City Council

(as the case may be) where the relevant First Homes Unit is FH Disposed of other than as a First Home.

2.9 If the District Council, Wychavon District Council or the City Council (as the case may be) does not wish to acquire the relevant First Homes Unit itself and is not satisfied that either of the grounds in paragraph 2.6 of this Part 1B above have been made out then it shall within twenty eight (28) Working Days of receipt of the written request made in accordance with paragraph 2.6 of this Part 1B of this Schedule serve notice on the owner setting out the further steps it requires the owner to take to secure the FH Disposal of the First Homes Unit as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to FH Dispose of the First Homes Unit as a First Home he may serve notice on the District Council, Wychavon District Council or the City Council (as the case may be) in accordance with paragraph 2.6 of this Part 1B of this Schedule following which the District Council, Wychavon District Council or the City Council (as the case may be) must within twenty eight (28) Working Days issue confirmation in writing that the First Homes Unit may be FH Disposed of other than as a First Home.

2.10 Where a First Homes Unit is FH Disposed of other than as a First Home or to the District Council, Wychavon District Council or the City Council (as the case may be) at the Discount Market Price in accordance with paragraphs 2.8 or 2.9 of this Part 1B of this Schedule above the outgoing Owner of the First Homes Unit shall pay to the District Council, Wychavon District Council or the City Council (as the case may be) forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution (which obligation shall remain binding on the outgoing owner notwithstanding such FH Disposal).

2.11 Any person who purchases a First Homes Unit free of the restrictions in this Schedule pursuant to the provisions in paragraphs 2.9 and 2.10 shall not be liable to pay the Additional First Homes Contribution to the District Council, Wychavon District Council or the City Council (as the case may be).

### 3. **USE**

3.1 Each First Homes Unit shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise FH Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 3.1.1 – 3.1.4 of this Part 1B below.

3.1.1 A First Homes Owner may let or sub-let their First Homes Unit for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the District Council, Wychavon District Council or the City Council (as the case may be) in writing before the First Homes Unit is Occupied by the prospective tenant or sub-tenant. A



First Homes Owner may let or sub-let their First Homes Unit pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

3.1.2 A First Homes Owner may let or sub-let their First Homes Unit for any period provided that the First Homes Owner notifies the District Council, Wychavon District Council or the City Council (as the case may be) and they consent in writing to the proposed letting or sub-letting. The District Council, Wychavon District Council or the City Council (as the case may be) covenant not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances at 3.1.2.1 – 3.1.2.6 of this Part 1B of this Schedule below *Subject to receipt of sufficient evidence that apply:*

3.1.2.1 the First Homes Owner is required to live in accommodation other than their First Homes Unit for the duration of the letting or sub-letting for the purposes of employment;

3.1.2.2 the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;

3.1.2.3 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;

3.1.2.4 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;

3.1.2.5 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and

3.1.2.6 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

3.1.3 A letting or sub-letting permitted pursuant to paragraph 3.1.1 or 3.1.2 of this Part 1B must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Homes Unit on terms which expressly prohibit any further sub-letting.

3.1.4 Nothing in this paragraph 3 prevents a First Homes Owner from renting a room within their First Homes Unit or from renting their First Homes Unit as temporary sleeping accommodation provided that the First Homes Unit remains at all times the First Homes Owner's main residence.

4. **FH MORTGAGEE EXCLUSION**

- 4.1 The obligations in paragraphs 1 - 3 (inclusive) of this Part 1B of this Schedule in relation to First Homes shall not apply to any FH Mortgagee or any receiver (including an administrative receiver appointed by such FH Mortgagee or any other person appointed under any security documentation to enable such FH Mortgagee to realise its security or any administrator (howsoever appointed (each a "FH Receiver"))) of any individual First Homes Unit or any persons or bodies deriving title through such FH Mortgagee or FH Receiver PROVIDED THAT:
- 4.1.1 such FH Mortgagee or FH Receiver shall first give written notice to the Council of its intention to FH Dispose of the relevant First Homes Unit;
  - 4.1.2 once notice of intention to FH Dispose of the relevant First Homes Unit has been given by the FH Mortgagee or FH Receiver to the District Council , Wychavon District Council or the City Council (as the case may be) the FH Mortgagee or FH Receiver shall be free to sell that First Homes Unit at its full FH Market Value and subject only to paragraph 4.1.3 of this Part 1B of this Schedule;
  - 4.1.3 following the FH Disposal of the relevant First Homes Unit the FH Mortgagee or FH Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the District Council , Wychavon District Council or the City Council (as the case may be) the Additional First Homes Contribution

## **SCHEDULE 2**

### **Education Contribution**

The Owner covenants with the County Council as follows:

1. To pay the Primary Contribution as follows:
  - a. Prior to the first Occupation of the 250<sup>th</sup> Dwelling to pay the County Council the first part of the Primary Contribution being the sum of Seven Hundred and Fifty Thousand Pounds (£750,000.00) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment); and
  - b. Prior to the first Occupation of the 500<sup>th</sup> Dwelling to pay the County Council the second part of the Primary Contribution being the sum of One Million Pounds (£1,000,000.00) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)
  - c. Prior to the first Occupation of the 1,000<sup>th</sup> Dwelling to pay the County Council the third part of the Primary Contribution being the sum of One Million Two Hundred and Fifty-One Thousand Pounds (£1,251,000.00) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)
  - d. Prior to the first Occupation of the 1,500<sup>th</sup> Dwelling to pay the County Council the fourth part of the Primary Contribution being the sum of One Million Five Hundred Thousand Pounds (£1,500,000.00) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)
  - e. Prior to the first Occupation of the 1,750<sup>th</sup> Dwelling to pay the County Council the final part of the Primary Contribution being the sum of One Million Six Hundred and Seventy-Two Thousand Nine Hundred and Seventy-Two Pounds and Fifty-Three Pence (£1,672,972.53) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)
2. To pay the Secondary Contribution as follows:
3. Prior to the Occupation of 25% (twenty five percent) of the Dwellings on a Phase to pay to the County Council 50% (fifty per cent) of the Secondary Contribution Attributable to that Phase and prior to the first Occupation of 50% of the Dwellings on a Phase to pay to the County Council the remaining balance of the Secondary Contribution attributable to that Phase (which shall be

increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date payment is due).

4. To give notice in writing to the Head of Legal and Democratic Services at the County Council at least 14 Working Days prior to the expected date of the Occupation of the following;
  - a. 250<sup>th</sup> Dwelling;
  - b. 500<sup>th</sup> Dwelling;
  - c. 1,000<sup>th</sup> Dwelling;
  - d. 1,500<sup>th</sup> Dwelling; and
  - e. 1,750<sup>th</sup> Dwelling
  - f. First occupation of 25% of the Dwellings on each Phase and first occupation of 50% of the Dwellings on each Phase
5. If the Primary Contribution and the Secondary Contribution are not paid as set out in paragraphs 1 and 2 above then interest upon the said contribution shall become payable to the County Council in addition to the said contribution from date of each part of the Primary Contribution and Secretary Contribution became due until the date of payment to the County Council at the rate of 4% above the base lending rate of Barclays Bank PLC
6. Without prejudice to paragraphs 1, 2, 3 and 4 to this Schedule not to Occupy or permit the Occupation of any Dwelling on the Land beyond the trigger points listed in paragraphs 1 and 2 above until each of the respective parts of payment of the Primary Contribution and the Secondary Contribution together with an amount equivalent to any increase in the Retail Prices Index pursuant to paragraph 1 and 2 above and any interest pursuant to paragraph 4 above has been paid in full to the County Council
7. The Owner hereby confirms that the Primary Contribution may be used to reimburse the costs of the education facilities set out in the Primary Contribution, should the County Council deem it necessary to provide such education facilities before the Primary Contribution is paid in full by the Owner to the County Council
8. The Owner hereby confirms that the Secondary Contribution may be used to reimburse the costs of the education facilities set out in the Secondary Contribution, should the County Council deem it necessary to provide such education facilities before the Secondary Contribution is paid in full by the Owner to the County Council

### **SCHEDULE 3**

#### **Employment Strategy**

The Owner covenants with the District Council as follows;

1. Prior to the Commencement of Development of each Phase the Owner shall submit a Local Employment and Training Action Plan in relation to the construction phase of each Phase of the Development to the District Council for its approval (such approval not to be unreasonably withheld or delayed) and the Commencement of Development of each Phase shall not take place until the Local Employment and Training Action Plan has been approved by the District Council in writing; and
2. The Owner shall implement the approved Local Employment and Training Action Plan during the construction phase of each Phase of the Development to the satisfaction of the District Council

## SCHEDULE 4

### MANAGEMENT ORGANISATION

The Owner covenants with the District Council as follows:

1. Not to Commence Development prior to the submission to the District Council for approval of the Management Organisation Management Plan (including the Local Engagement Strategy) and Community Facilities Management Plan (such documents to have been approved by the Management Organisation prior to submission) and for the avoidance of doubt the Commencement of Development on the Land shall not take place until such time as the Management Organisation Management Plan (including the Local Engagement Strategy) and the Community Facilities Management Plan has been approved in writing by the District Council
2. Prior to the Occupation of any Dwellings, the Employment Land, Local Centre or care home to open the Management Organisation Account in accordance with the Management Organisation Management Plan which has been approved by the District Council in accordance with paragraph 1 of this Schedule
3. To procure that the Management Organisation shall receive the following funding which shall be paid directly into the Management Organisation Account:
  - a. the Service Charge in accordance with paragraph 5 of this Schedule;
  - b. the Rental Income; and
  - c. the Initial Investment Funding and Ongoing Investment Funding in accordance with paragraph 6 of this Schedule
4. To transfer the Community Facilities to the Management Organisation in accordance with:
  - a. for the On Site Public Open Space (including the Sports Pavilion) and Strategic SUDS, the provisions of Schedule 8 of this Deed
  - b. for Middle Broomhall Farm, the provisions of Schedule 7 of this Deed
  - c. for all other Community Facilities (including green infrastructure, the village square, meeting space, and other parts of the Local Centre identified in the Community Facilities Management Plan) in accordance with the Community Facilities Management Plan

PROVIDED THAT the Management Organisation shall not be required to accept the transfer of the Community Facilities until they have been constructed or laid out in accordance with the relevant provisions of this Deed; and

and to ensure that all transfers of Community Facilities to the Management Organisation contain a right for the benefit of future payers of the Service Charge to require that the

Community Facilities are transferred to a new Management Organisation for the sum of £1 in the circumstances and subject to the conditions outlined in paragraph 5 of Appendix 6 to this Deed

5. To procure that the Management Organisation maintains and manages the Community Facilities in accordance with the Management Organisation Management Plan and Community Facilities Management Plan approved by the District Council pursuant to paragraph 1 of this Schedule (or such variations to the Management Organisation Management Plan and Community Facilities Management Plan approved in writing by the District Council from time to time)
6. Not sell or otherwise dispose of any Dwelling, the care home, or any part of the Employment Land and / or Local Centre unless such transfer or lease shall contain:
  - a. a covenant on the part of the transferee to pay the Service Charge to the Management Organisation;
  - b. a covenant on the part of the transferee to ensure that its successors in title enter into a deed of covenant with the Management Organisation in respect of the payment of the Service Charge; and
  - c. an agreement between the parties to enter a restriction on the title of the Dwelling, care home, or relevant part of the Employment Land or Local Centre in relation to the above covenants relating to the payment of the Service Charge in the following form (or such other form agreed by the Management Organisation):

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge is to be registered without a certificate signed by [the Management Organisation] or its conveyancer that the provisions of clause [...] of the transfer dated [...] have been complied with"*

PROVIDED THAT prior to the disposal of any Dwelling, the care home, or relevant part of the Employment Land or Local Centre the details of all items covered by the Service Charge and the arrangements for calculating the appropriate level of the Service Charge, the Service Charge Increase Provisions, and the obligations for payment have been approved in writing by the District Council and Management Organisation and FURTHER PROVIDED THAT provision shall be made for the obligation to pay the Service Charge to the Management Organisation to be novated or otherwise transferred so that the obligation to pay the Service Charge is to pay it to a new Management Organisation in the event that the Community Facilities are transferred to a new Management Organisation and it that circumstance authorising all funds held by the Management Organisation to be transferred to the new Management Organisation

7. To pay to the Management Organisation:

- a. the Initial Investment Funding (such sums to be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment) prior to Occupation of any Dwelling; and
- b. the Ongoing Investment Funding to be paid in ten (10) annual instalments with the first payment to be paid on the one year anniversary of the date of the occupation of the first Dwelling and nine (9) further annual payments thereafter on the anniversary of the date of the occupation of the first Dwelling

AND if the Initial Investment Funding and Ongoing Investment Funding are not paid to the Management Organisation in accordance with paragraphs 7(a) and (b) of this Schedule then interest on the said sums shall become payable to the Management Organisation in addition to the said sum from the date payment was due until the date of payment at the rate of 4% above the base lending rate of HSBC Bank PLC



## SCHEDULE 5

### Local Centre Facilities

The Owner covenants with the District Council as follows:

1. To safeguard the Healthcare Accommodation for the Option Period and in the event the NHS Property Services (or any successor body) confirm in writing within Option Period the Healthcare Accommodation is required on-site, to sell the Healthcare Accommodation to the NHS Property Services (or any successor body) in accordance with the provision of paragraph 3 of this Schedule
2. In the event that:
  - a) the NHS Property Services (or any successor body) confirm in writing within the Option Period that the Healthcare Accommodation is not required on-site; or
  - b) at the end of the Option Period the Owner has complied with this paragraph of this Schedule but there has been no written notification from NHS Property Services (or any successor body) that the Healthcare Accommodation is required on-site; or
  - c) the sale of the Healthcare Accommodation has not completedthe Owner shall be free to use the Healthcare Accommodation for any other purpose (subject to obtaining any necessary consents) and the provisions of this Schedule shall thereafter cease to have effect.
3. In the event the NHS Property Services (or any such successor body) serves notice pursuant to paragraph 1 of this Schedule with the Option Period that it intends to acquire the Healthcare Accommodation, to sell the Healthcare Accommodation to the NHS Property Services (or any such successor body) such sale shall be on the following terms:
  - a) at market value
  - b) free from all encumbrances
  - c) with the benefit of rights over all access roads and footpaths, and with the benefit of all necessary services and conducting media to serve the Healthcare Accommodation
  - d) subject to a restriction not to cause or permit the use of the Healthcare Accommodation other than as a site for the purpose of providing a doctors' general practitioners surgery (which for the avoidance of doubt may include an ancillary pharmacy and ancillary facilities for treatments provided by general practitioners, nurses and other healthcare professionals) or other healthcare provision approved by the District Council
4. Prior to Occupation of the 900<sup>th</sup> Dwelling to pay the District Council the Healthcare Contribution (which contribution shall be increased in line with the percentage increase in the Retail Prices

Index from 3 November 2021 until the date when the contribution becomes due) towards the Agreed Purposes

5. To give notice in writing to the Head of Legal Services at the District Council and the NHS Property Services (or any successor body) at least 14 Working Days prior to the expected date of the Occupation of the 900<sup>th</sup> Dwelling
6. If the Healthcare Contribution is not paid as set out in paragraph 4 above interest upon the contribution shall become payable to the District Council in addition to the said contribution from the date that the contribution became due until the date of payment to the District Council at the rate of 4% per annum above the base lending rate of HSBC Bank PLC
7. Without prejudice to paragraph 4 to this Schedule above not to allow or permit the Occupation of the 900<sup>th</sup> Dwelling until the Healthcare Contribution together with an amount equivalent to any increase in the Retail Prices Index pursuant to paragraph 4 above and any interest pursuant to paragraph 6 above has been paid in full to the District Council

## SCHEDULE 6

### Highways Contribution

The Owner covenants with the County Council as follows:

1. To pay the Highways Contribution to the County Council in five parts as follows;
  - a. Prior to the first Occupation of the First (1<sup>st</sup>) Dwelling to pay the County Council the first part of the Highways Contribution being the sum of £2,000,000 (two million pounds) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment); and
  - b. Prior to the first Occupation of the two hundred and fiftieth (250<sup>th</sup>) Dwelling to pay the County Council the second part of the Highways Contribution being the sum of £2,391,000 (two million three hundred and ninety one thousand pounds) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)
  - c. Prior to the first Occupation of the [four hundred and eighty-seventh (487<sup>th</sup>)] Dwelling to pay the County Council the third part of the Highways Contribution being the sum of £5,000,000 (five million pounds) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)
  - d. Prior to the first Occupation of the seven hundred and fiftieth (750<sup>th</sup>) Dwelling to pay the County Council the fourth part of the Highways Contribution being the sum of £5,000,000 (five million pounds) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)
  - e. Prior to the first Occupation of the one thousand five hundredth (1,500<sup>th</sup>) Dwelling to pay the County Council the second part of the Highways Contribution being the sum of £5,442,770 (five million four hundred and forty-two thousand seven hundred and seventy pounds) (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)

PROVIDED THAT if the number of Dwellings to be constructed to complete the Development is to be less than 1,500 the final instalment of the Highway Contribution shall include a sum based on the number of Dwellings to be constructed to complete the Development (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment)

2. To give notice in writing to the Head of Legal and Democratic Services at the County Council at the address herein at least 14 Working Days prior to the expected date of the Occupation of the following;

- a. First (1<sup>st</sup>) Dwelling;
  - b. two hundred and fiftieth (250<sup>th</sup>) Dwelling
  - c. four hundred and eighty-seventh (487<sup>th</sup>) Dwelling
  - d. seven hundred and fiftieth (750<sup>th</sup>); and
  - e. one thousand five hundredth (1,500<sup>th</sup>) Dwelling
3. If the Highways Contribution is not paid to the County Council as set out in paragraph 1 above then interest upon the said contribution shall become payable to the County Council in addition to the said contribution from the date when the payment of each phase of the Highways Contribution became due until the date of payment to the County Council at the rate of 4% above the base lending rate of Barclays Bank PLC
4. Without prejudice to paragraphs 1, 2, and 3 above to this Schedule not to cause or allow or permit Occupation of the 1<sup>st</sup> Dwelling, the 250<sup>th</sup> Dwelling, the 487<sup>th</sup> Dwelling, the 750<sup>th</sup> Dwelling, and 1,500<sup>th</sup> Dwelling on the Land until each of the respective parts of the Highways Contribution together with an amount equivalent to any increase in the Retail Prices Index pursuant to paragraph 1 above and any interest pursuant to paragraph 3 above has been paid in full to the County Council
5. The Owner hereby confirms that the Highway Contribution may be used to reimburse the costs of providing the highways facilities as set out in the Highways Contribution, should the County Council deem it necessary to provide such highways facilities before the Highways Contribution is paid in full by the Owner to the County Council

## **SCHEDULE 7**

### **Restoration of Middle Broomhall Farm**

The Owner covenants with the District Council as follows:

1. Within twelve months of the Commencement of Development to submit to the District Council and Management Organisation for approval the Scheme of Works and for the avoidance of doubt the Commencement of Development of the Phase which shall include Middle Broomhall Farm shall not take place until such time as the Scheme of Works has been approved in writing by the District Council and Management Organisation
2. Prior to the Occupation of the 300<sup>th</sup> Dwelling the Owner will or will procure completion of the restoration of Middle Broomhall Farm in accordance with the Scheme of Works at their own cost and expense in accordance with any conditions attached to the Planning Permission and to the reasonable satisfaction of the District Council
3. Prior to the Occupation of the 350<sup>th</sup> Dwelling to transfer Middle Broomhall Farm with all necessary services connections and infrastructure ready for occupation to the Management Organisation on the following terms:
  - a. at nil consideration
  - b. free from all encumbrances
  - c. payment of all fees incurred by the Management Organisation in accepting the transfer of Middle Broomhall Farm including but not limited to legal, land registry fees and stamp duty land tax (if applicable)
  - d. with the benefit of rights over all access roads and footpaths, and with the benefit of all necessary services and conducting media to serve Middle Broomhall Farm
  - e. contain a restrictive covenant expressed to be for the benefit of the freehold of the remainder of the Land and each and every part thereof to comply with the Management Organisation Management Plan approved by the District Council pursuant to Schedule 4 of this Deed or such variation as approved by the District Council in writing

## **SCHEDULE 8**

### **On Site Public Open Space**

#### **Part 1 – Planning Obligations**

The Owner covenants with the District Council as follows:

1. Prior to Commencement of Development in relation to any Phase to submit to the District Council for approval the On Site Public Open Space Plan for that Phase and for the avoidance of doubt Commencement of Development on that Phase shall not take place until such time as the On Site Public Open Space Plan for that Phase has been approved in writing by the District Council
2. Prior to Occupation of the 300<sup>th</sup> Dwelling to submit to the District Council for approval the Public Open Space Phasing Plan and for the avoidance of doubt Occupation of the 300<sup>th</sup> Dwelling shall not take place until such time as the Public Open Space Phasing Plan has been approved in writing by the District Council
3. Prior to the Occupation of the 450<sup>th</sup> Dwelling to layout the Temporary Public Open Space in accordance with the approved Public Open Space Phasing Plan and On Site Public Open Space Plans referred to in paragraphs 1 and 2 of this Schedule and any conditions attached to the Planning Permission and to the reasonable satisfaction of the District Council's Joint Head of Economy and Environment and in accordance with all current health and safety requirements from the date that the same is provided until the date that the On Site Public Open Space is provided in accordance with paragraph 4 of this Schedule
4. Prior to the Occupation of the 1,000<sup>th</sup> Dwelling to lay out the On Site Public Open Space (save for the LEAPs in Crookbarrow Woodland Link which will need to be laid out prior to the Occupation of the 1,500<sup>th</sup> Dwelling) in accordance with the approved Public Open Space Phasing Plan and On Site Public Open Space Plan for each Phase, which shall, for the avoidance of doubt, include the construction of the Sports Pavilion, and in accordance with any conditions attached to the Planning Permission and to the reasonable satisfaction of the District Council's Joint Head of Economy and Environment and Management Organisation and in accordance with all current health and safety requirements from the date that the same is provided until the date of its transfer pursuant to the provisions of this Schedule
5. Prior to the Occupation of the 1,500<sup>th</sup> Dwelling to lay out the Strategic SUDS in accordance with the approved Public Open Space Phasing Plan and On Site Public Open Space Plan for each Phase, and in accordance with any conditions attached to the Planning Permission and to the reasonable satisfaction of the District Council's Joint Head of Economy and Environment and in accordance with all current health and safety requirements from the date that the same is provided until the date of its transfer pursuant to the provisions of this Schedule

6. To remedy any defects in the On Site Public Open Space and replace any planting that is diseased or dying or items that are broken or damaged from the date that the same is provided until the date the On Site Public Open Space is transferred to the Management Organisation (or such other body approved by the District Council in its absolute discretion) pursuant to the provisions of this Schedule
7. Until such time as the On Site Public Open Space is transferred to the Management Organisation (or such other body approved by the District Council in its absolute discretion) in accordance with the requirements of this Schedule to ensure that the On Site Public Open Space is maintained in accordance with any conditions attached to the Planning Permission and with all health and safety requirements in force from time to time and to the satisfaction of the District Council's Joint Head of Economy and Environment and is available at all times for use by the general public at large
8. Until such time as the Strategic SUDS are transferred to the Management Organisation (or such other body approved by the District Council in consultation with the County Council in its absolute discretion) in accordance with the requirements of this Schedule to ensure that the Strategic SUDS are maintained in accordance with any conditions attached to the Planning Permission and with all statutory requirements in force from time to time and to the satisfaction of the District Council's Joint Head of Economy and Environment
9. Not to Occupy more than 70% (seventy percent) of the Dwellings on each Phase until the On Site Public Open Space within that Phase has been transferred to the Management Organisation and the Strategic SUDS within that Phase have been transferred to the Management Organisation (or such other body approved in writing by the District Council in consultation with the County Council) in accordance with the requirements of this Schedule
10. Following the written approval of the laying out of the On Site Public Open Space and Strategic SUDS by the District Council's Joint Head of Economy and Environment in accordance with paragraph 4 of this Schedule to transfer the On Site Public Open Space to the Management Organisation and the Strategic SUDS to the Management Organisation (or such other body approved in writing by the District Council in consultation with the County Council)
11. The transfer of the On Site Public Open Space to the Management Organisation (or such other body approved in writing by the District Council) shall be on the following terms:
  - a. at nil consideration;
  - b. free from all encumbrances and payment of all fees incurred by the Management Organisation in accepting the transfer of the On Site Public Open Space including but not limited to legal, land registry fees and stamp duty land tax (if applicable)
  - c. with the benefit of rights over all access roads and footpaths, and with the benefit of all necessary services and conducting media to serve the On Site Public Open Space

- d. contain a restrictive covenant expressed to be for the benefit of the freehold of the remainder of the Land and each and every part thereof to the effect that the On Site Public Open Space (shall not be used for purposes other than public recreation in perpetuity
- 12. The transfer of the Strategic SUDS to the Management Organisation (or such other body approved in writing by the District Council in consultation with the County Council) shall be on the following terms;
  - a. at nil consideration;
  - b. free from all encumbrances and payment of all fees incurred by the Management Organisation (or such other body approved in writing by the District Council and County Council) in accepting the transfer of the Strategic SUDS including but not limited to legal, land registry fees and stamp duty land tax (if applicable)
  - c. with the benefit of rights over all access roads and footpaths, and with the benefit of all necessary services and conducting media to serve the Strategic SUDS
- 13. To ensure that the On Site Public Open Space is retained in accordance with the On Site Public Open Space Plans together with access to and egress from it and made available at all times for use by the general public at large and maintained to the reasonable satisfaction of the District Council's Joint Head of Economy and Environment

## **Part 2 – Works Obligations**

- 1. The Owner shall procure that the design, construction and completion of the each of the Community Purpose Works ("the Works") is carried out (save in the event of Novation):
  - (a) diligently, in a good and workmanlike manner and in accordance with good building practice;
  - (b) using only good quality materials and well-maintained plant;
  - (c) in accordance with this agreement, the Sports Pavilion Specification, the Scheme of Works and the Requisite Consents;
  - (d) so that the sports pitches are constructed in accordance with Sports England Natural Turf for Sport Guidelines or any superseding guidelines;
  - (e) in accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;



- (f) in compliance with all relevant British Standards, codes of practices and good building practice;
  - (g) by selecting and using materials so as to avoid hazards to the health and safety of any person
  - (h) in accordance with all covenants, stipulations, rights and conditions affecting the Property; and
  - (i) so that on the Practical Completion Date the Community Purpose Works shall each be fit for its intended purpose as contemplated by the respective Planning Permission Provided that nothing in the Specification, the Scheme of Works or any provision of this Deed shall override or modify, or impose, any obligation on the Owner in respect of the design of the Community Purpose Works which is more onerous than the obligation to exercise in the preparation or completion of that design the standard of skill and care to be expected of an architect or other appropriate designer experienced in designing works of the same type, nature, scale and complexity as each of the respective Community Purpose Works
2. The District Council and the Management Organisation may enter the Sports Pavilion or Middle Broomhall Farm, at any time during the design and construction phase, upon reasonable notice to the respective Building Contractor, to inspect progress of each of the Sports Pavilion Works and the Middle Broomhall Farm Works and the materials used. In entering the Sports Pavilion or the Middle Broomhall Farm, the District Council and the Management Organisation shall not obstruct progress of or cause damage to the respective works and shall:
    - 2.1 not give any instructions or make any representations directly to either of the Building Contractors or the respective Professional Team; and
    - 2.2 comply with the respective Building Contractor's health and safety and site rules.
  3. The Owner shall procure that any instructions or representations made to the Owner by the District Council and the Management Organisation that comply with the terms of this agreement are promptly dealt with
  4. The Owner shall regularly inspect or procure the inspection of the Sports Pavilion Works and the Middle Broomhall Farm Works to procure that any defects, shrinkages or other faults that appear during the carrying out of each of the respective works are promptly remedied.
  5. The Owner shall following commencement of the Works:
    - 5.1 hold or procure that there are held formal site meetings to review the progress of the Works at appropriate intervals of no less than monthly basis at which representatives of the Building Contractors and the Professional Teams will be present;

- 5.2 procure that the District Council and the Management Organisation shall be invited to attend all such meetings and that the District Council and the Management Organisation receives copies of the minutes thereof;
6. The Owner shall procure that the District Council and the Management Organisation are given at least 3 Working Days' notice of all commissioning tests of plant and systems and shall permit the District Council to attend the same.
7. The Owner may make changes to the Works provided that:
- 7.1 the variations are insubstantial and immaterial;
  - 7.2 the variations are in accordance with the Planning Permission, the Requisite Consents and any statutory requirements;
  - 7.3 any substitute materials used are of an equivalent or superior standard and of equivalent or better quality and suitability to those originally specified;
  - 7.4 the relevant variation does not reduce the quality of the Works;
  - 7.5 the Owner informs the District Council and the Management Organisation of any proposed variations promptly;
  - 7.6 the Owner shall procure that a copy of every variation, order or certificate relating to the Works pursuant to the Building Contracts is promptly supplied to the District Council and the Management Organisation; and
  - 7.7 the Owner shall if appropriate provide copies of the varied Middle Broomhall Works and the approved Sports Pavilion Specification and the Scheme of Works as the case may be.
8. If the District Council or the Management Organisation requires the Owner to carry out any Council's Variations then:
- 8.1 it shall deliver to the Owner a notice specifying such Council's Variations and provide information reasonably necessary for the Owner to be able to comply with its obligations pursuant to paragraph 17.2 below;
  - 8.2 the Owner shall within 10 Working Days (or such longer period as the District Council or the Management Organisation may agree) of the request referred to in paragraph 17.1 above, provide to the District Council;
    - 8.2.1 details of the additional reasonable costs that the Owner will incur in carrying out the Council's Variations ("Extra Costs"); and

- 8.2.2 amended drawings, specifications and other technical information as may be reasonably requested by the District Council or the Management Organisation to reflect the scope of work for the Council's Variations ("Extra Information");
9. if the District Council or the Management Organisation wishes the Council's Variations to be carried out:
- 9.1 the District Council or the Management Organisation (as the case may be) shall within 10 Working Days of receipt of the documentation/information referred to in paragraph 8.2 notify the Owner of its acceptance;
- 9.2 the Owner shall carry out the Council's Variations in accordance with the Extra Information as part of the Works and they shall from receipt by the District Council or the Management Organisation (as the case may be) of notification under paragraph 8.2 be included in the expression the Works; and
- 9.3 the District Council or the Management Organisation (as the case may be) shall following expenditure by the Owner of the Extra Costs and receipt of a valid VAT invoice pay to the Owner within 28 Working Days of written demand the Extra Costs (and no further sums shall be payable by the District Council or the Management Organisation (as the case may be) to the Owner in relation to the Council's Variations).
10. Within four weeks of the date of their respective appointment, the Owner shall supply to the District Council and the Management Organisation Collateral Warranties (and in the case of Design Sub - Contractors use reasonable endeavours to supply) in favour of the District Council duly executed as a deed by the donor of the warranty from each of:
- 10.1 The Building Contractors or all of them if more than one
- 10.2 The Professional Teams; and
- 10.3 The Design Sub-Contractors
- in respect of both the Sports Pavilion Works and the Middle Broomhall Farm Works specifying a level of professional indemnity cover that has been approved by the District Council and the Management Organisation.
11. From the date of this Deed the Owner shall insure, or shall procure that the Building Contractor insures, the Works and all plant and unfixed materials and goods delivered to or placed on or adjacent to the property and intended for incorporation in the Works against all perils resulting in loss or damage thereto on customary contractor's all risks terms for not less than the full reinstatement value thereof (taking into account the progress of the Works) together with all site clearance and professional fees incurred in connection with such reinstatement.

12. The Owner shall keep the Works, plant, materials and goods so insured or procure that they are kept so insured until the end of the Defects Liability Period for each respective Building Contract as the case may be.
13. Without prejudice to the indemnity, the Owner shall maintain, or procure that the Building Contractors maintain, insurance in respect of injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £10,000,000 for any one claim or series of claims arising out of the same event. Such insurance shall be maintained from the date of this Deed until the end of the Defects Liability Period for each respective Building Contract.
14. The Owner shall require that the Building Contractors and each member of the Professional Teams and each Design Sub-Contractor, as a condition of its appointment, maintains professional indemnity insurance cover with a reputable insurer for an amount not less than £5,000,000 for any one claim or series of claims arising out of the same event. The insurance cover must be maintained for a minimum of 12 years following the Practical Completion Date for each respective Building Contract, provided that such insurance is available at commercially reasonable rates and terms.
15. The District Council and/or the Management Organisation may at any time request documentary evidence that the insurance policies required by this clause are being maintained including, if required by the District Council or the Management Organisation, an original letter from the insurers confirming:
  - 15.1 the insurance currently in force; and
  - 15.2 a broker's letter confirming insurance is in place
16. If the Owner fail to provide such evidence within 10 Working Days of the District Council's and/or the Management Organisation's request, then the District Council and/or the Management Organisation may effect such insurance itself/themselves and recover the cost of doing so from the Owner.
17. The Owner shall procure that:
  - 17.1 the Employer's Agent gives at least 10 Working Days' notice to the District Council and the Management Organisation of its intention to inspect each of the Sports Pavilion and Middle Broomhall Farm for the purposes of issuing the certificate of Practical Completion under each of the respective Building Contracts. The District Council and the Management Organisation may attend the inspection and make representations to the Owner; and
  - 17.2 without fettering the discretion of the Employer's Agent in carrying out its duties under each of the Building Contracts, the respective Employer's Agent takes proper consideration of any representations that are made by the District Council and the

Management Organisation when considering whether to issue the certificate of Practical Completion in accordance with the terms of each of the respective Building Contracts provided always that the Owner shall procure that the Employer's Agents shall not issue a statement of Practical Completion unless:

- 17.3 all building materials and rubbish in relation to the Works have been removed from the Sports Pavilion or Middle Broomhall Farm (as the case may be);
  - 17.4 the Works, are complete in all respects and free from defects save for minor items or minor defects the existence, completion or rectification of which would not, in the opinion of the Employer's Agent, prevent or interfere with the use and enjoyment (or the fitting out for use) of the Sports Pavilion and Middle Broomhall Farm (including for the avoidance of doubt, the external works) intended by the District Council and the Management Organisation; and
  - 17.5 the Works have been completed in accordance with, respectively, the Scheme of Works, and the Planning Permission, or the Middle Broomhall Works, the Planning Permission and the Sports Pavilion Specification.
18. The Owner shall ensure that each of the Employer's Agents gives a copy of the respective certificate of Practical Completion to the District Council and the Management Organisation immediately after its issue, together with a copy of any accompanying snagging list.
19. Within six weeks of each respective Practical Completion Date, the Owner shall supply to the District Council or the Management Organisation (as the case may be):
- 19.1 the health and safety file as required by the CDM Regulations;
  - 19.2 the operating and maintenance manuals and all manufacturers' warranties and guarantees in relation to all plant and equipment installed in the Works;
  - 19.3 copies of the Requisite Consents;
  - 19.4 testing and commissioning certificates and records for all mechanical and electrical equipment installed as part of the Works required under the Building Regulations 2010;
  - 19.5 a copy of the completion certificate or final certificate under the Building Regulations 2010;
  - 19.6 in two paper copies (and in electronic format if and to the extent the District Council has previously so requested) in addition (where required) to the originals.

for each of the Sports Pavilion Works and the Middle Broomhall Farm Works and the Owner shall take any other steps reasonably required to ensure the District Council and the Management Organisation has the same (but no greater) rights as the Owner to use and rely upon all of the documents, guarantees, warranties, reports, results, certificates, designs,

drawings and data referred to above without payment to any person (provided that the Owner shall only be required to assign the benefit of any rights they may have immediately prior to any release under paragraph 27). Within eight weeks of each Practical Completion Date, the Owner shall supply to the District Council or the Management Organisation a copy of each of the energy performance certificates and recommendation reports under the Building Regulations 2010 for each of the Sports Pavilion Works and the Middle Broomhall Farm Works.

20. The Owner shall ensure that each of the Building Contractor's obligations to remedy defects, shrinkages or other faults in the Works during the respective Defects Liability Periods are enforced and that shall ensure that all such defects, shrinkages or other faults in the Works appearing within the respective Defects Liability Period of which the Owner is aware or as are notified in writing by the District Council to the Owner are made good promptly and, if the Owner fail to procure that each of the respective Building Contractor carries out such works within a reasonable period of time, the Owner shall carry out the same promptly at their own cost and the Owner shall, at their own expense as soon as reasonably practicable after each of the Practical Completion Dates, procure that any defects or works which are outstanding at each of the Practical Completion Dates are made good or completed (as the case may be) (all such defects shall be hereafter known as "Defects").
21. With regard to all Defects that are of an urgent nature such that they have compromised or will compromise the health, safety and well-being of the occupants and users of the Sports Pavilion or Middle Broomhall Farm or they are not wind or water tight or they cannot be used for their intended use, the Owner shall procure that such defects are made good within 5 Working Days of receipt of a request to do so from the District Council or the Management Organisation.
22. After the Practical Completion Date, the Owner shall comply with their obligations to make good any Defects provided always that they will be granted access to do so by the Management Organisation on reasonable notice, upon such reasonable terms and conditions for access and working practice that the Management Organisation may reasonably require and at such reasonable times that the Management Organisation shall permit having regard to the nature of the use of the Sports Pavilion or the Middle Broomhall Farm (as the case may be), any requirements of the District Council, its assignees, contractors, consultants, or suppliers and the Management Organisation its assignees, contractors, consultants, or suppliers.
23. The Owner shall procure that each of the Building Contractors, the Professional Teams and each Design Sub-Contractor grants to the District Council and the Management Organisation an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of the Building Contractors, the Professional Teams or the relevant Design Sub-Contractor for any purpose relating to the Works including (without limitation) the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works. Such licence shall enable the District Council

and the Management Organisation to copy and use the Material for the extension of the Works but shall not allow any designs in the Material to be reproduced for an extension of the Works

24. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the consent of the Building Contractors, the Professional Teams or the relevant Design Sub-Contractor.
  25. The Owner shall procure that:
    - 25.1 the Employer's Agent gives at least 10 Working Days' notice to the District Council and the Management Organisation of its intention to inspect the Sports Pavilion or the Middle Broomhall Farm (as the case may be) for the purposes of issuing the certificate of making good defects under each of the respective Building Contracts. The District Council and the Management Organisation may attend the inspection and make representations to the Owner; and
    - 25.2 without fettering the discretion of the respective Employer's Agent in carrying out its duties under the Building Contract, such Employer's Agent takes proper consideration of any representations that are made by the District Council and the Management Organisation when considering whether to issue the certificate of making good defects in accordance with the terms of the respective Building Contract.
  26. The Owner shall ensure that the respective Employer's Agent gives a copy of the respective certificate of making good defects to the District Council and the Management Organisation immediately after its issue, together with a copy of any accompanying final account.
  27. Upon the issue of the each of the certificates of Making Good Defects and following either satisfaction of or waiver by the District Council and the Management Organisation of the following conditions:
    - 27.1 the Owner having complied with the paragraphs numbered 10 and 23 of this Part 3 save in respect of any Building Contractor, Design Sub-Contractor or Professional Team member that has become Insolvent; and
    - 27.2 the Owner having complied with the paragraphs numbered 18, 19, 20, 26 and 29 of this Part 3
- the Owner shall execute and procure that each of the Building Contractor duly executes a form of Novation of the respective Building Contract in favour of the District Council or the Management Organisation (as the case may be) following which the Owner shall be released from all liability under Part 2 of this Schedule 8..

In this paragraph 27 "**Insolvent**" has the meaning set out in the JCT Design & Build 2016 standard form contract.

Prior to executing the Novation and as precondition to issuing the Novation, the Owner shall deliver a statement in writing confirming to the District Council and the Management Organisation that as at the later of the date of the certificate of Completion of Making Good Defects and the date of payment of any sums due to the Building Contractor under the Building Contract that the Owner is not aware of any claims made by any of the Building Contractors in respect of any sums it is owed in respect of the Works the liability for which has not been discharged by the Owner and the Owner is not aware (having made all reasonable enquiry) that there is any other liability actual contingent or prospective which may arise and become the liability of the District Council under the Building Contract.

28. The Owner undertake to indemnify the District Council and the Management Organisation and keep the District Council and the Management Organisation indemnified against all costs losses and expenses incurred whether directly or indirectly and which arise from any misrepresentation, failure to disclose or error in disclosure of any matter by the District Council and the Management Organisation pursuant to paragraph 29 herein or arising from any breach by or liability of the Owner of their obligations under the respective Building Contracts prior to the completion of the Novation and this indemnity shall continue in effect notwithstanding termination of this Deed .
29. The Owner shall procure that there is a 3 year agronomic maintenance agreement with the pitch subcontractor which is on terms approved by the District Council and the Management Organisation and that such agreement is novated to the District Council or the Management Organisation within 4 weeks of the Practical Completion Date on terms of novation that are no less favourable for the District Council or the Management Organisation than the Novation.



## **SCHEDULE 9**

### **Traveller Site Contribution**

The Owner covenants with the District Council as follows:

1. Prior to Occupation of the 400<sup>th</sup> Dwelling to pay the District Council the Traveller Site Contribution and (which contribution shall be increased in line with the percentage increase in the Retail Prices Index from 3 November 2021 until the date of payment) toward the cost of the acquiring a site and installing infrastructure to provide a new Traveller Site or extending an existing Traveller Site
2. To give notice in writing to the Head of Legal Services at the District Council at least 14 Working Days prior to the expected date of the Occupation of the 400<sup>th</sup> Dwelling
3. If the Traveller Site Contribution is not paid to the District Council in accordance with paragraph 1 above then interest upon the said contribution shall become payable to the Council in addition to the said contribution from Commencement of the Development until the date of payment to the District Council at the rate of 4% above the base lending rate of HSBC Bank PLC
4. Without prejudice to paragraph 1 to this Schedule above not to allow or permit Occupation of the 400<sup>th</sup> Dwelling until the Traveller Site Contribution together with any increase in the Retail Prices Index pursuant to paragraph 1 above and any interest pursuant to paragraph 3 above has been paid in full to the District Council

## **SCHEDULE 10**

### **Primary School**

The County Council covenants with the Owner as follows:

1. Within 12 months of the date of this Deed (or such longer period as may be agreed between the County Council and the Owner) to submit to the Owner for approval the Primary School Plan and the Primary School Site Transfer
2. Following approval by the Owner of the Primary School Plan and the Primary School Site Transfer to approve the Primary School Plan and the Primary School Site Transfer
3. For the avoidance of doubt Commencement of Development shall not take place until such time as the Primary School Plan and the Primary School Site Transfer has been approved in writing by the County Council

The Owner covenants with the County Council as follows:

4. From the date hereof not to enter into any disposition of the Primary School Site without the prior written consent of the County Council
5. Not to Commence Development until such time as the Primary School Plan and the Primary School Site Transfer has been approved in writing by the County Council
6. Following 1 (above) and within 12 months of the date of this Deed (or such longer period as may be agreed between the County Council and the Owner) to approve the Primary School Plan and the Primary School Site Transfer and submit it to the County Council for approval
7. Without prejudice to the requirements of paragraph 1 of this Schedule (above), the Owner covenants with the County Council to submit up to date title information to the County Council for the Primary School Site within 28 Working Days of receiving notice in writing from the County Council to do so.
8. The Owner shall permit the County Council and its agents and contractors with or without plant and machinery to enter the Land at all reasonable times, and upon reasonable notice and at its own risk, for the purpose of carrying out any soil or other non-invasive investigations or survey to the Primary School Site, the County Council doing as little damage as reasonably practicable, and making good promptly any damage which is done in order (provided that for any intrusive investigation work or survey the County Council shall provide the Owner with a full risk assessment and method statement (including proposals for reinstatement) prior to any such work or survey and the Owner reserves the right to grant the County Council a separate access licence for such work or survey) :
  - i. to carry out surveys, soil, water or environmental and geotechnical tests and other tests, inspections and measurements;

- ii. for the preparation of environmental impact or other studies;
9. Subject to Commencement of Development within 2 years from the date of this Deed or within 28 Working Days of Commencement if Commencement does not take place within 2 years (or such longer period as may be agreed with the County Council) to transfer the Primary School Site to the County Council in accordance with the requirements of the Primary School Site Transfer
  10. Notwithstanding paragraph 9 above, within one month of receipt by the Owner of a Notice from the County Council that it is ready to complete the Transfer of the Primary School Site, to complete the Transfer of the Primary School Site to the County Council
  11. Subject to Commencement of the Development within 3 and a half years from the date of this Deed or within 28 Working Days of Commencement if Commencement does not take place within 3 and a half years (or such longer period as may be agreed with the County Council) the Owner shall construct the Spine Road to an adoptable standard suitable for all traffic, to ensure the Spine Road is open for public use by all classes of traffic at all times and to ensure the Spine Road connects to the north/west boundary of the Primary School Site PROVIDED THAT in the event the County Council has not Commenced Development on the Primary School Site the Owner shall not be in breach of this obligation but paragraph 12 of this Schedule shall apply.
  12. This clause applies in the event the County Council has not Commenced development on the Primary School Site within the timeframe provided for in paragraph 11 above and not before 3 and a half years from the date of this Deed (or such longer period as may be agreed with the County Council) and subject to Commencement of Development the Owner within 1 month of being served notice in writing requiring it to do so shall construct the Spine Road to be constructed to an adoptable standard and suitable for all traffic, to ensure the Spine Road is open for public use by all classes of traffic at all times to connect and to ensure the Spine Road connects to the north/west boundary of the Primary School Site
  13. Following construction of the Spine Road in accordance with paragraph 11 or 12 above, the Owner shall maintain at its own expense the Spine Road to adoptable standards at all times until such time as it is adopted by the County Council
  14. Subject to Commencement of Development within 3 and a half years from the date of this Deed or within 28 Working Days of Commencement if Commencement does not take place within 3 and a half years (or such longer period as may be agreed with the County Council) the Owner shall ensure that the Spine Road contains the Services to the boundary of the Primary School Site at required capacities at all times until adoption by the relevant statutory undertakers
  15. Not to Commence Development (unless such longer period has been agreed with the County Council) until the Owner has submitted to the County Council in writing the details of the connection of the Spine Road and Services to the Primary School Site for approval ("the

Connection"). Thereafter the Owner shall ensure the Connection is constructed in accordance with the approved details.

16. Prior to the transfer of the Primary School Site from the Owner to the County Council the Owner shall ensure that the overhead three phase electricity line on wooden poles running north to south across the site will be diverted around the school site boundaries at the Owner's cost to the reasonable satisfaction of the County Council.
17. Within 2 years from the date of this Deed or, if earlier, the Commencement of works on the Primary School Site the Owner shall provide and construct and maintain at its own expense a Temporary Access Haul Road suitable for access by vehicles to the east boundary Primary School Site at a location to be approved by the County Council and in accordance with the requirements set out in paragraphs 19 to 23 (inclusive) below.
18. Thereafter the Owner shall maintain the Temporary Access Haul Road suitable for access by vehicles to the Primary School Site until completion of the works on the Primary School Site or until that the Spine Road is open for public use in accordance with the terms of this Schedule (whichever is later)
19. Design and construct the Temporary Access Haul Road to provide suitable and sufficient access for construction delivery vehicles of highway standard axle loading (maximum 12 tonnes per axle) and shall ensure the alignment of the Temporary Access Haul Road is suitable for a standard 16.5m long articulated vehicle
20. Design and construct the Temporary Access Haul Road in a proper and workmanlike manner and comply with all Statutory Requirements including the CDM Regulations 2015 and all health and safety requirements
21. Grant to the County Council and its agents all rights to pass and repass with or without all types of vehicles over the Temporary Access Haul Road as may be required for the construction and use of the school
22. To provide all necessary services and conducting media along the Temporary Access Haul Road to the boundary of the Primary School Site as may be required by the County Council for the construction of the school. Such services and conducting media shall be provided until the Services have been provided along the Spine Road in accordance with this Deed.
23. to separate the Temporary Access Haul Road from the Public Right of Way with suitable fencing.

## **SCHEDULE 11**

### **General Market Housing**

The Owner covenants with the District Council as follows:

1. Prior to the submission of the first Reserved Matters Application to submit to and obtain approval to the General Market Housing Phasing Plan by the District Council AND FOR THE AVOIDANCE OF DOUBT the General Market Housing Phasing Plan shall provide that the General Market Dwellings shall comprise:
  - 1.1 Not less than 35% of the General Market Dwellings being 1 and 2 bedroom units; and
  - 1.2 Not less than 35% of the General Market Dwellings being 3 bedroom units; and
  - 1.3 Not more than 30% of the General Market Dwellings being 4 and 4+ bedroom units
2. With or prior to the submission of the first Reserved Matters Application for each Phase to submit to and obtain approval by the District Council the General Market Housing Phasing Plan for that relevant Phase PROVIDED THAT where a Phase contains General Market Dwellings in a mix other than the mix listed at paragraph 1.1, 1.2 and 1.3 the Owner shall provide to the District Council alongside the General Market Housing Phasing Plan an explanation as to how the delivery of the Phase will not prejudice the delivery of the obligation in paragraph 1 of this Schedule
3. To construct and lay out the General Market Dwellings in each Phase in accordance with the General Market Housing Phasing Plan for that Phase or such revised version agreed by the District Council

## **SCHEDULE 12**

### **District Council's Covenants**

1. The District Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council (both acting reasonably) shall agree provided that such purposes comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended substituted extended or replaced from time to time)
2. The District Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the District Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten years of the date of receipt by the District Council with the exception of any contribution (or element thereof) or commuted sum collected towards the maintenance of public open space
3. The District Council shall provide to the Owner such evidence, as the Owner shall reasonably request in writing in order to confirm the expenditure of the sums paid by the Owner under this Deed
4. The District Council hereby covenants with the Owner to notify the City Council and Wychavon District Council of the expected date of first Occupation of the first Affordable Housing Dwelling in each Phase within 14 Working Days of receiving notification of the expected date of first Occupation of the first Affordable Housing Dwelling in that Phase from the Owner in accordance with paragraph 9(a) of Schedule 1
5. The District Council hereby covenants with the Owner to use reasonable endeavours to agree the Local Lettings Plan for each Phase with the City Council and Wychavon District Council within 28 Working Days of sending notification of the expected date of first Occupation of the first Affordable Housing Dwelling in that Phase in accordance with paragraph 4 of this Schedule 12
6. The District Council hereby covenants with the City Council not to provide any of the approvals or agreements required pursuant to Paragraphs 1, 2, 3 and 12 of Schedule 1 without first providing the details of the same to the City Council and obtaining the City Council's approval to the same, such approval not to be unreasonably withheld or delayed by the City Council.

### **First Homes**

7. Upon receipt of the Additional First Homes Contribution in accordance with paragraph 2.10 of Part 1B of Schedule 1 of this Deed the District Council shall:

- 7.1 within 56 Working Days of such receipt, provide a completed application to enable the removal of the Restriction where such a restriction has previously been registered against the relevant title; and
  - 7.2 apply all monies received by way of Additional First Homes Contribution towards the provision of Affordable Housing
- 8. Following receipt of notification of the Disposal of the relevant First Home in accordance with paragraph 2 of Part 1B of Schedule 1 the District Council shall forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 2.5 of Part 1B of Schedule 1.
- 9. The District Council hereby covenants that it shall issue a Compliance Certificate for a First Home within twenty eight (28) Working Days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 2.3 and 2.4.1 of Part 1B of Schedule 1 have been met

## **SCHEDULE 13**

### **Wychavon District Council's Covenants**

1. Wychavon District Council hereby covenants with the Owner to use reasonable endeavours to agree the Local Lettings Plan for each Phase with the District Council and City Council within 28 Working Days of receiving notification of the expected date of first Occupation of the first Affordable Housing Dwelling in that Phase from the Owner in accordance with paragraph 9(a) of Schedule 1

#### **First Homes**

2. Upon receipt of the Additional First Homes Contribution in accordance with paragraph 2.10 of Part 1B of Schedule 1 of this Deed Wychavon District Council shall:
  - 2.1 within 56 Working Days of such receipt, provide a completed application to enable the removal of the Restriction where such a restriction has previously been registered against the relevant title; and
  - 2.2 apply all monies received by way of Additional First Homes Contribution towards the provision of Affordable Housing
3. Following receipt of notification of the Disposal of the relevant First Home in accordance with paragraph 2 of Part 1B of Schedule 1 Wychavon District Council shall  
forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 2.5 of Part 1B of Schedule 1
4. Wychavon District Council hereby covenants that it shall issue a Compliance Certificate for a First Home within twenty eight (28) Working Days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 2.3 and 2.4.1 of Part 1B of Schedule 1 have been met



## **SCHEDULE 14**

### **City Council Covenants**

1. The City Council hereby covenants with the Owner to use reasonable endeavours to agree the Local Lettings Plan for each Phase with the District Council and Wychavon District Council within 28 Working Days of receiving notification of the expected date of first Occupation of the first Affordable Housing Dwelling in that Phase from the District Council

#### **First Homes**

2. Upon receipt of the Additional First Homes Contribution in accordance with paragraph 2.10 of Part 1B of Schedule 1 of this Deed the City Council shall:
  - 2.1 within 56 Working Days of such receipt, provide a completed application to enable the removal of the Restriction where such a restriction has previously been registered against the relevant title; and
  - 2.2 apply all monies received by way of Additional First Homes Contribution towards the provision of Affordable Housing
3. Following receipt of notification of the Disposal of the relevant First Home in accordance with paragraph 2 of Part 1B of Schedule 1 the City Council shall  
forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 2.5 of Part 1B of Schedule 1
4. The City Council hereby covenants that it shall issue a Compliance Certificate for a First Home within twenty eight (28) Working Days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 2.3 and 2.4.1 of Part 1B of Schedule 1 have been met

## **SCHEDULE 15**

### **County Council's Covenants**

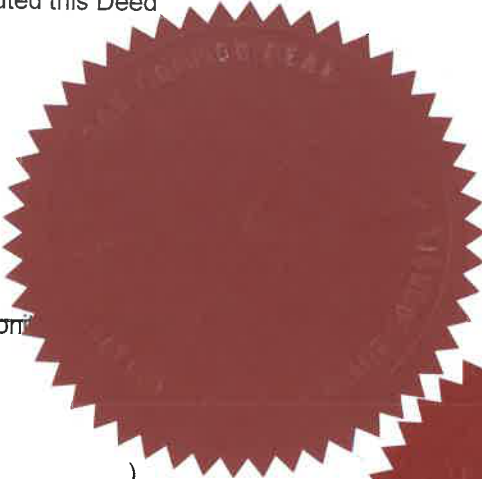
1. The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the County Council (both acting reasonably) shall agree provided that such purposes comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended substituted extended or replaced from time to time)
2. The County Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the County Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten years of the date of receipt by the County Council
3. The County Council shall provide to the Owner such evidence, as the Owner shall reasonably request in writing in order to confirm the expenditure of the contributions paid by the Owner under this Deed
4. The County Council covenants with the Owner to use best endeavours to procure that the primary school on the Primary School Site shall be operational for the start of the academic year following the Occupation of 500 Dwellings
5. The County Council covenants with the District Council that it will:
  - 5.1 include within the specification prepared by the County Council for the primary school and nursery to be constructed on the Primary School Site that the provider of the proposed primary school on the Primary School Site should enter into a Community Use Agreement with the Council prior to any educational and / or community facilities built on the Primary School Site being brought into use or within such other time period as the District Council agrees in writing; and
  - 5.2 use reasonable endeavours to encourage the provider of the proposed primary school on the Primary School Site to enter into a Community Use Agreement with the District Council prior to any educational and / or community facilities built on the Primary School Site being brought into use or within such other time period as the District Council agrees in writing

In witness whereof the District Council, Wychavon District Council, the City Council, the County Council, the Owner, and the Chargee have duly executed this Deed

THE COMMON SEAL of MALVERN HILLS DISTRICT COUNCIL was hereto affixed in the presence of:

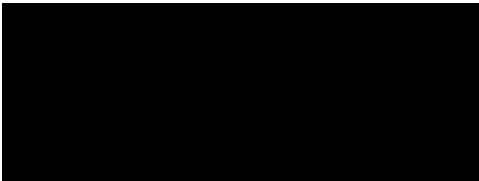


Chief Executive / Deputy Chief Executive / Monitoring Officer



2038

THE COMMON SEAL of WYCHAVON DISTRICT COUNCIL was hereto affixed in the presence of:



Director of Legal and Governance / Chief Executive / Deputy Chief Executive / Joint Monitoring Officer and Environment



13572

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

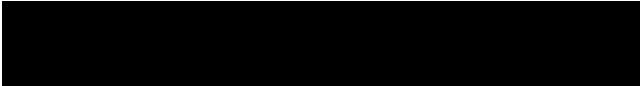


Authorised Signatory

PRINCIPAL SOLICITOR



THE COMMON SEAL of WORCESTER CITY COUNCIL was hereunto affixed in the presence of:-



Corporate Director Planning and Governance / Deputy Monitoring Officer



EXECUTED AS A DEED by )  
WELBECK STRATEGIC LAND (WORCESTER) LLP )  
acting by one Partner, Wimpole Street Limited )

  
.....  
Authorised Signatory of Wimpole Street Limited

Witnessed by: .....

Name of Witness

Signature of Witness

Occupation of Witness

Address of Witness

EXECUTED AS A DEED by

MISTERS BROS LIMITED

acting by two Directors

Director

Director

EXECUTED AS A DEED by

DANIEL WALTER ALDERSLEY

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

EXECUTED AS A DEED by

CHARLOTTE LOUISE ALDERSLEY

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

EXECUTED AS A DEED by

KAREN JAYNE ALDERSLEY

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

EXECUTED AS A DEED by

REBECCA WIDDOWSON

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

EXECUTED AS A DEED by

MARTIN ARMSDEN THOMAS

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

EXECUTED AS A DEED by )

ANTHONY NIMROD CHAMPION )

in the presence of )

Name of Witness

Signature of witness

Occupation of Witness

Address of witness Pt

EXECUTED AS A DEED by )

COLIN ROBERT ANSTEY )

in the presence of

Name of Witness

Signature of witness F

Occupation of Witness

Address of witness Pt

EXECUTED AS A DEED by )

JANE ROZANNE ANSTEY )

in the presence of )

Name of Witness

Signature of witness F

Occupation of Witness

Address of witness F

EXECUTED AS A DEED by

GRACE MARIA JONES

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness B

  
~~EXECUTED AS A DEED~~ by *as attorney fa* )

PRUDENCE LILIAN MARGARET SMEETON *under a* )  
*Power of Attorney dated 27 July 2022* )  
in the presence of )

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

EXECUTED AS A DEED by )

CHARLES PETER RANDALL )

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

EXECUTED AS A DEED by )

SALLY ELIZABETH KING )

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

EXECUTED AS A DEED by

JAMES ALEXANDER KING

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

**EXECUTED AS A DEED** by )

**MATTHEW JOHN BRERETON** )

in the presence of )

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

**EXECUTED AS A DEED** by )

**MARGARET ANN DOVEY** )

in the presence of )

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

**EXECUTED AS A DEED** by )

**SALLY ANN MORRALL** )

in the presence of )

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

**EXECUTED AS A DEED** by )

**ALISON LOIS DOVEY** )

in the presence of )

Name of Witness

Signature of witness

Occupation of Witness

Address of witness



**EXECUTED AS A DEED by**

**KERRY RUFF**

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

**EXECUTED AS A DEED by**

**DAVID FRANK SMITH**

in the presence of

Name of Witness

Signature of witness

Occupation of Witness

Address of witness

**EXECUTED AS A DEED by**

**WELBECK STRATEGIC LAND LLP**

acting by one Partner Wimpole Street Limited

.....  
Authorised Signatory of Wimpole Street Limited

Witnessed by:

Name of Witness

Signature of Witness

Occupation of Witness

Address of Witness

## **APPENDIX 1**

### **Allocation of Affordable Housing Dwellings**

## **Allocation of Affordable Housing Dwellings**

### **Timescales for applying the Local Connection cascade**

This document sets out the Councils expected timescales for moving from one part of the cascade to the next. This will guide Council and RP officers in terms of operational practice and ensure effective monitoring and is as follows:

- For initial lets of rented units advertising can commence at least 2 months prior to allocation to seek expressions of interest. The property should not be allocated until completion or handover to RP.
- For re-lets of rented units the property can be advertised on Housing for You when notice is received from the existing tenant.
- For initial sale of shared ownership and discount market sales units advertising, to seek expressions of interest and exchange of contracts can commence prior to handover. It is encouraged that the property is advertised via Housing for You as part of any wider package of promotion.
- For re-sales of shared ownership and discount market sales units advertising can commence at the point the value has been agreed between the relevant parties. (NB The Council must agree discount market sales valuations).
- Advertising of all properties - for the first two weeks preference should be given to applicants with a Local Connection to the Parish, if necessary for the next two weeks, preference should be extended to applicants with a Local Connection to the adjoining Parishes followed by the relevant District area:

Wk 1	Wk2	Wk3	Wk4	Wk5	Wk 6	Wk 7	Wk 8
Parish		Adjacent Parishes		District			

After 8 weeks the property may be allocated to an applicant registered on Housing for You (where relevant) and who has a need for affordable housing and is resident in the UK.

NB Sometimes there may be a need to add further steps after week 8. For example where a neighbouring district is in close proximity to the Parish, residents of that district should be given priority following the relevant District Council and before extending to the UK. If this is necessary it would be agreed by the Director of Housing and Communities and Director of Planning for Malvern Hills and Wychavon Councils.

## **APPENDIX 2**

### **Plans**

PLAN 1

Notes:  
Do not scale from this drawing.  
All construction must meet the site and be responsible for taking and checking dimensions.  
All construction information must be taken from the drawing only.  
Any discrepancies between drawings, specifications and site conditions must be brought to the attention of the responsible officer.  
This drawing is the work of the author and is the property of John Thompson & Partners.

This drawing is for planning purposes only. It is not intended to be used for construction purposes. Whilst all reasonable efforts are used to ensure drawings are accurate, John Thompson & Partners accept no responsibility for any errors or omissions. It is the user's responsibility to check the accuracy of the information provided.

Key:  
Planning Application Area  
Existing roads  
Existing railway lines  
Boundary of separate application for listed building

Planning Application Area = 153.62Ha  
Detailed Planning Application Area = 0.81Ha

NO	54,422.59	Refuse employment	1/1
NO	28,111.14	Refuse employment	1/1
NO	28,064.72	Refuse employment	1/1

Rev	Date	Description	Drawn	Chkd
1	01/01/2011	Initial	JT	JP

FOR PLANNING  
Client:  
Welbeck Strategic Land LLP

WELBECK LAND LIMITED

JOHN THOMPSON & PARTNERS

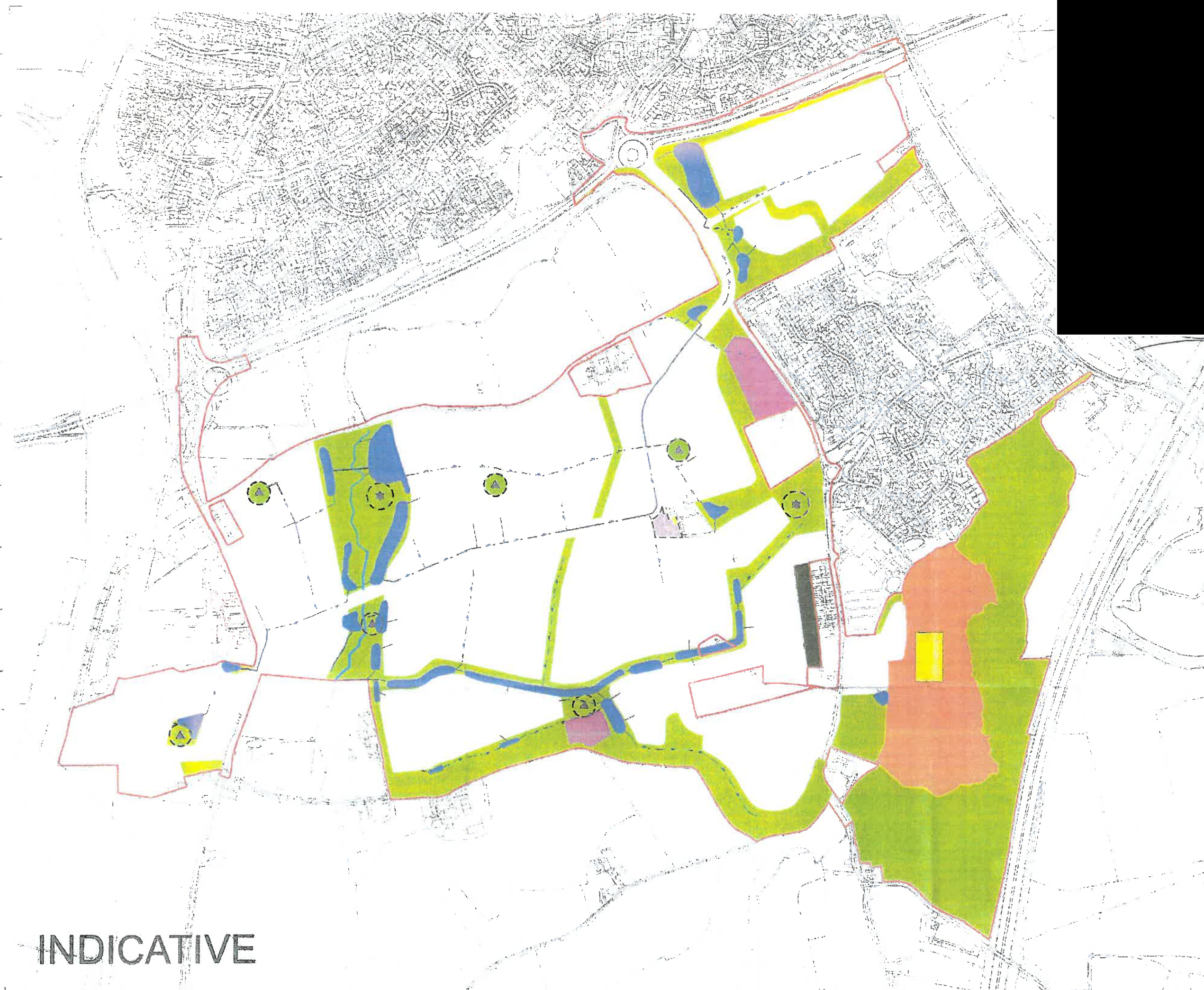
itp  
25-29 Great Britain Street  
London, EC1V 0DA  
T: +44 (0)20 7517 1100  
F: +44 (0)20 7517 1101  
UK: www.jtp.co.uk

Project:  
South Worcester

Drawing Title:  
Parameter Plan:  
Site Boundary Plan

Scale: 1:5000  
Drawing No: PP\_01  
Revision: P02  
Scale Bar: 0 50 100 200m





INDICATIVE

# PLAN 2

Notes:  
Do not scale from this drawing.  
All dimensions must refer to the site and be responsible for taking and checking.  
Dimensions:  
1.1. Construction information shown on each sheet should be consistent with the information shown on the other sheets of the drawing.  
1.2. Any dimensions shown on the drawing are for information only and are not to be used for construction purposes.  
1.3. The drawings and the works described are the property of JTP.  
1.4. This drawing is for planning purposes only. It is not intended to be used for construction purposes. It is not intended to be used for construction purposes. It is not intended to be used for construction purposes.

- Site boundary
- Public open space
- Orchard
- Outdoor sport facilities
- Sports Hub
- Restoration of Middle Brookfield Farm
- Public square
- Stable
- Attenuation storage
- Realignment of watercourse
- Storm water sewer
- LEAP
- NEAP
- Alignments

10/01/2017	Rev. B	10
10/01/2017	Rev. C	10
10/01/2017	Rev. D	10
10/01/2017	Rev. E	10
10/01/2017	Rev. F	10
10/01/2017	Rev. G	10
10/01/2017	Rev. H	10
10/01/2017	Rev. I	10
10/01/2017	Rev. J	10
10/01/2017	Rev. K	10
10/01/2017	Rev. L	10
10/01/2017	Rev. M	10
10/01/2017	Rev. N	10
10/01/2017	Rev. O	10
10/01/2017	Rev. P	10
10/01/2017	Rev. Q	10
10/01/2017	Rev. R	10
10/01/2017	Rev. S	10
10/01/2017	Rev. T	10
10/01/2017	Rev. U	10
10/01/2017	Rev. V	10
10/01/2017	Rev. W	10
10/01/2017	Rev. X	10
10/01/2017	Rev. Y	10
10/01/2017	Rev. Z	10

Rev. Date. Description. Drawn. Check.

DRAFT

Client

Welbeck Strategic Land LLP



Project

Hopfields

Drawing Title

Community facilities

Scale @ A2: 1:5000 Job No: 00454J

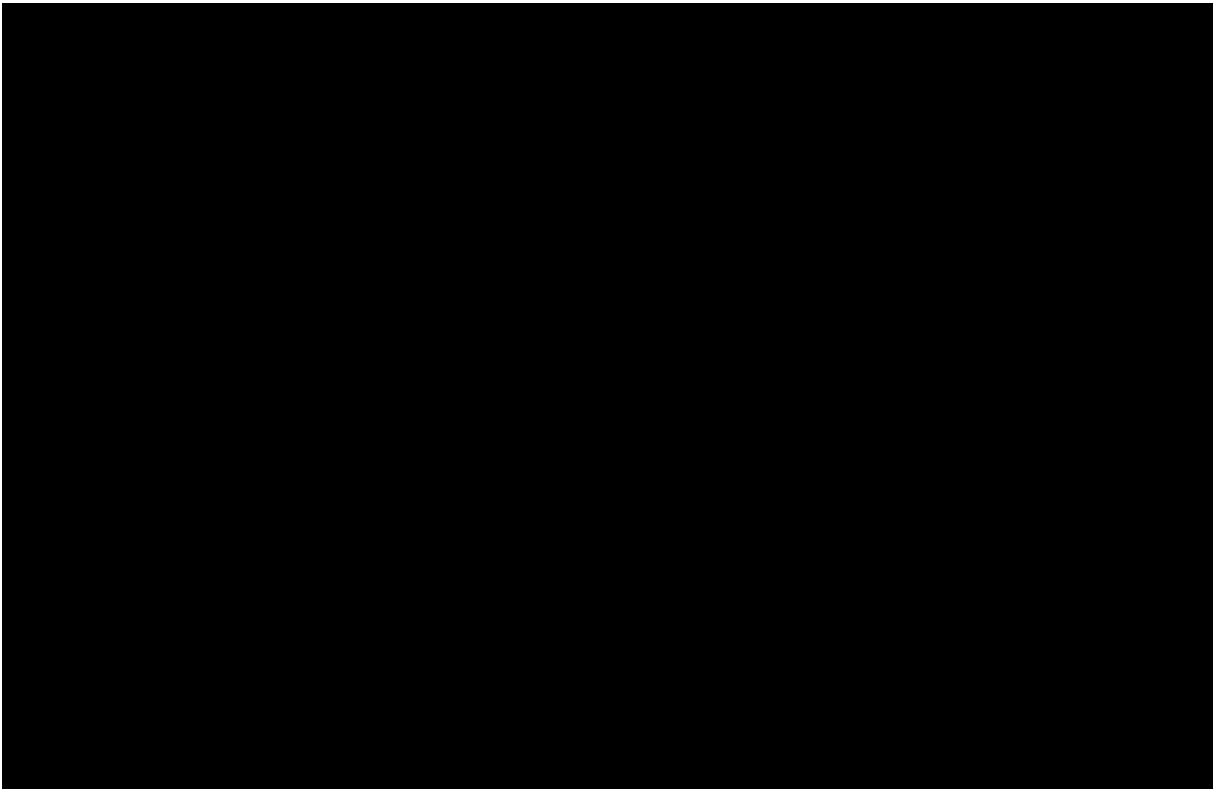
Drawing No: (00454J)\_SK\_114 Revision: E

Drawn By: 0 50 100 150m

















# PRIMARY SCHOOL PLAN

Notes:  
Do not scale from this drawing.  
All contractors must visit the site and be responsible for taking and checking Dimensions.  
All construction information should be taken from figured dimensions only.  
Any discrepancies between drawings, specifications and site conditions must be brought to the attention of the supervising officer.  
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## KEY

-  SWUE Application Boundary
-  Primary School Site  
(Boundary may deviate by +/- 5m but must deliver a total area of 2.57 Ha)
-  Residential/ Mixed Use development parcels
-  5.5m Haul Road (during construction of school)
-  5.5m Haul Road (diversion to serve later construction phases)
-  Existing Public Right of Way (PROW)
-  Existing PROW to be diverted
-  Proposed permanent diversion of PROW

D4	20.02.20	Haul road and junction with highway relocated	ASD	AD
D3	05.09.19	Amendment to site boundary on west, east and south-east edges	ASD	AD
D2	29.07.19	Key updated & annotation added	DZ	AD
D1	18.07.19	2m footpath removed. Haul road realigned.	ASD	AD
	18.02.19	First Issue	ASD	CSM

Rev	Date	Description	Drawn	Chkd
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Drawing Status

**FINAL ISSUE**

Client

Welbeck Strategic Land LLP



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www.jtp.co.uk

Project

Hopfields, Worcester

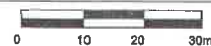
Drawing Title

Primary School Site  
s106 Access Plan

Scale @ A3 1:1250 Job Ref. 00454J

Drawing No. 00454J\_SK\_137 Revision D4

Scale Bar





## **APPENDIX 3**

### **Local Employment and Training Strategy**

## **Outline Local Employment and Training Strategy**

Welbeck Strategic Land being the promoter of the proposed Development, is committed, in progressing its developments, to an approach that assists in the expansion of skills, opportunities and training in the construction sector. Accordingly, in relation to the Development it agrees that a Local Employment and Training Action Plan will be prepared and approved by the Council for each Phase of the Development, as provided for in the S106 agreement. The Local Employment and Training Action Plans will set out the proposals and initiatives promoting local employment and training during the construction and marketing phases of each Phase of the Development and the end user phase of commercial development. An outline of the requirements which may be included in the Local Employment and Training Action Plans is set out below. The term "Local" is to be defined as within South Worcestershire.

### **1. KEY OUTPUTS:**

#### In the Construction Phase

- Promotion of newly created job and training opportunities locally, particularly into deprived communities across South Worcestershire
- Number of apprenticeships generated (for builds over 12 months)
- Employment/training for People unemployed or inactive.
- Support with transport, childcare and work equipment
- Health and Safety Training/Issue of appropriate site safety licences (e.g. CSCS cards)
- Training and work experience for younger people including those who are not in employment, training or education (NEET)
- Workforce development e.g. In-house training schemes specifically in areas of local skills shortages
- School engagement including careers information, advice & guidance; supporting delivery of the STEM curriculum
- Construction curriculum support activities (can include school, college and university site visits)
- Work placements – students in education & pre-employment Work experience (14-16 years, 16-19 years and 19+ years) and graduate and intern placement opportunities.

#### In the End User Phase of any commercial development

- Promotion of newly created job and training opportunities locally, particularly into deprived communities across South Worcestershire
- Number of apprenticeships generated
- Employment/training for people unemployed or inactive
- Work Trials and interview guarantees
- Support with transport, childcare and work equipment
- Training and work experience for younger people including those who are not in employment, training or education (NEET)
- Workforce development e.g. In-house training schemes specifically in areas of local skills shortages

- School engagement including careers information, advice & guidance; offering work experience placements.

**2. MONITORING:** Proposals for monitoring the outcomes and outputs of the Local Employment and Training Action Plan which will involve measuring and sharing key outcomes and outputs with the Council via six monthly reports in an agreed format. . . The key outcomes to be achieved will include:

- Employment, training and apprenticeships opportunities from both construction and end use phases
- Opportunities for local businesses to bid/tender for the provision of goods and services to the development throughout build and post-construction phases assisted by, but not limited to local partnership programmes
- Opportunities to raise educational attainments, employability skills and careers information, advice and guidance through engagement with schools, colleges and Universities.
- Targeted activity to promote opportunities arising from development within the Hopfieldsurban extension to deprived communities in South Worcestershire particularly the Dines Green community.

**3. WAYS OF WORKING:** In seeking to achieve the above key outcomes strategies will consider the following ways of working:

- Site specific action plans in keeping with the scale, size, and type of planned development taking a strategic approach to phased scheduling over multiple sites.
- The actions plan will specify expected outputs from phased sites selecting from the key output list above, with indicative targets agreed
- The applicant for the overall scheme will be responsible for setting out the accurate key performance indicators which can accurately measure outcomes and outputs against agreed targets for all phases which may be developed independently.
- Only outputs and outcomes for residents and businesses within the South Worcestershire administrative boundaries will be targeted and measured by post code, with district breakdowns monitored where feasible
- The developer/main contractor of each phase will take overall responsibility for managing delivery and managing, monitoring and reporting of the agreed action plans in partnership with the site management team and subcontractors.
- The South Worcestershire Councils will actively support developers and main contractors to develop local relationships with Worcestershire Local Enterprise Partnership (WLEP) stakeholders and partner agencies which can support delivery of key outcomes and outputs including, but not limited to:
  - (i) **Worcestershire Apprenticeships** in conjunction with developers/main contractors approved training provider
  - (ii) **Worcestershire Training Providers Association** including but not limited to CITB, Heart of Worcestershire College and Warwickshire College Group

- (iii) **Worcestershire Careers and Enterprise Company** in respect to engaging with local High Schools
- (iv) **University of Worcester** in respect to engaging with local undergraduates seeking work placements and work experience
- (v) **DWP/Jobcentre Plus and WLEP/South Worcestershire Councils approved programmes** with regard to maximising local employment for South Worcestershire residents.
- (vi) **Herefordshire and Worcestershire Chamber of Commerce, Worcester Business Central, Worcestershire County Council Economic Development and Find It in Worcestershire** with regard to capacity building and opening up supply chain opportunities to the South Worcestershire business community

**4. TRADE CONTRACTORS AND SUB-CONTRACTOR COMPLIANCE:** which may include the following actions:

- using trade contractors and sub-contractors from developer's and local supply chain with whom they have established working relationships and holding meet the buyer events and providing local contractors opportunities to bid for contract packages.
- identifying the employment and skills requirements expected of trade contractors and sub-contractors at the briefing and tendering stages;
- ensuring appropriate employment and skills commitments are included in the appointment documents for trade contractors and sub-contractors;
- ensuring that commitments are clearly defined with timescales for delivery; and
- regular progress meetings with trade contractors and sub-contractors to manage and monitor their delivery of the relevant aspects of the construction phase.

Trade contractors and subcontractors to include materials equipment and product suppliers, consultants, and providers of services.

**5. COMMUNICATIONS and CO-ORDINATION:**

Developers/main contractors will work with the South Worcestershire Councils and Worcestershire Local Enterprise Partnership to jointly promote the opportunities and benefits arising from developments to South Worcestershire communities, residents and businesses in terms of employment, skills, training, school and community engagement and business opportunities.

The co-ordination of the Local Employment and Training Action Plan which will involve engagement by the developer with local schools, colleges, Universities, local training providers, local communities, and businesses.

## **APPENDIX 4**

### **Specification for Temporary Public Open Space**

South Worcester Urban Extension

Also Known as Hopfields

**TEMPORARY OPEN SPACE SPECIFICATION**

May 2020

## **1.0 INTRODUCTION**

- 1.1 The purpose of this document is to outline a Specification for the provision of temporary open space for the strategic site allocation at the South Worcester Urban Extension also known as Hopfields.
- 1.2 The location of the temporary open space is shown on attached plan (reference number). An attenuation pond will be located immediately to the west of the open space.
- 1.3 The area proposed for temporary open space currently comprises gently sloping open arable land. Within the temporary open space there shall be two temporary football goals constructed and maintained

## **2.0 SITE PREPARATION**

### **Clearance Works**

- 2.1 Prior to works the Contractor should check and verify the location and type of utilities/underground services that might affect construction.
- 2.2 Existing vegetation located within the area proposed for temporary open space is to be removed off-site.

### **Alleviate soil and subsoil compaction**

- 2.4 Soils and subsoils are required to be cultivated to alleviate compaction.

### **Preparation**

- 2.5 Areas of ground to be sown should be first ploughed or rotovated and raked or harrowed to produce a medium fine, firm tilth.
- 2.6 The seed mix below includes perennial species that can be slow to germinate and grow. Ground cover is anticipated to take approximately 12 months to knit together as turf. Newly seeded areas will therefore be protected to prevent seedling destruction by pedestrians.
- 2.7 There will likely be a flush of annual weeds from the soil during the first growing season. This will be controlled by topping or mowing.

### **Seeding**

- 2.8 Use Germinal Seeds A19 All Purpose mix or similar approved :
  - 35% CORAIL STRONG CREEPING RED FESCUE
  - 25% ZURICH CREEPING PERENNIAL RYEGRASS
  - 10% ABERCHARM SLENDER CREEPING RED FESCUE
  - 25% CALICO PERENNIAL RYEGRASS
  - 5% HIGHLAND BROWNTOP BENTGRASS

- 2.9 Sow at a rate of application: 50g/m<sup>2</sup> in accordance with supplier recommendations

---

### **Planting**

- 2.10 Plant species-rich meadow grassland around and in the attenuation basin
- 2.11 Plant marginal plants in the base of the attenuation basin; use of mounding at either end of the open space providing a sense of a semi enclosed space, using earth excavated to create the attenuation basin.

## **3.0 MAINTENANCE**

### **Initial Maintenance to Ensure Establishment**

- 3.1 When grass is 50-60 mm high remove debris, litter and all stones and earth clods larger than 25 mm in any dimension, and when grass is reasonably dry, cut to approximately 25-40 mm high.
- 3.2 Bare areas, areas of dead grass that have failed to thrive during establishment must be made good by recultivation and reseeded.
- 3.3 The height of growth must not exceed 40 mm at any time. Water as necessary to ensure establishment.

### **Annual Maintenance**

#### Mowing

- 3.4 Regular mowing will be during the growing season. The mowing frequency will have regard to weather conditions to ensure that there is no excessive cutting during dry periods. In very wet conditions all grass cutting operations will cease until conditions allow for grass cutting to take place. All litter, stones or other debris will be collected and removed immediately prior to grass cutting operations. The height of growth on the pitch must not exceed 40 mm at any time.

#### Fertiliser application

- 3.5 Applications of an approved fertiliser will assist in promoting growth and recovery after being in use over the winter months. Fertiliser shall be applied with appropriate equipment that ensures a uniform distribution.

#### Overseeding

- 3.6 Overseeding will be undertaken as required in the off season.





Notes:  
Do not scale from this drawing.  
All contractors must visit the site and be responsible for taking and checking Dimensions.  
All construction information should be taken from figured dimensions only.  
Any discrepancies between drawings, specifications and site conditions must be brought to the attention of the supervising officer.  
This drawing and the works depicted are the copyright of JTP.  
This drawing is for planning purposes only. It is not intended to be used for construction purposes. Whilst all reasonable efforts are used to ensure drawings are accurate, JTP accept no responsibility or liability for any reliance placed on, or use made of, this plan by anyone for purposes other than those stated above.

Key

Phase 1A boundary

Temporary open space

Residential

School

Employment

17.03.21	Final	DZ	AD	
16.03.21	First Issue	DZ	AD	
Rev	Date	Description	Drawn	Chkd

Drawing Status  
**PLANNING**  
Client

Welbeck Strategic Land LLP

South Worcester

Drawing Title  
Temporary open space  
Phase 1A

Scale @ A3 1:2500      Job Ref. 00454J

Drawing No. 00454J\_SK\_113      Revision

Scale Bar      0      20      40      60m

## **APPENDIX 5**

### **Specification for Sports Pavilion**

## Sports Hall Specification

### **General Requirements**

Facilities that need to be provided include:

- Four court sports hall
- 2 x 17 person Indoor changing rooms
- 4 x 20 person external changing rooms (2 x home, 2 x away)
- 2 x officials changing
- Male, female and disable WC
- Reception and office space
- Lobby
- Locker provision
- 1x 60sq.m multi-function room
- Car park provision, with cycle racks/storage
- Storage areas
- Plant

\*Sports hall and changing rooms to accord with Sport England design standards. Sports Hall to be designed in accordance with the guidance produced by Sports England: Developing the Right Sports Hall

The internal layout shall following the sketch scheme indicated on plans numbered 00454\_SK\_020G Rev E and 00454\_SK\_020F Rev E.

### **General Design Principles**

The general design principles that need to be met for the facilities are:

- Vandal resistant design
- Design should be in keeping with the surroundings
- Layout must provide flexibility for different proportions of male/female use
- Disabled access and building DDA compliant

### **Materials and Finishes**

- External doors and glazing should generally be clear
- Internal doors to be solid-core construction for robustness and acoustic properties and should be fitted with good quality ironmongery and kick plates
- Floors where players are expected to walk should be suitable for studded trainers/boots
- Walls: All circulation spaces, function spaces, toilets and kitchens shall be plastered or rendered and then decorated with for heavy duty (non-domestic) use.

- Full height tiling to shower areas and 3 courses of tiles to sinks splash backs.
- Moisture resistant ceilings to changing rooms and toilets.
- Changing rooms to be painted blockwork.
- Aluminium framed recessed mat well to entrance
- Heavy duty non-slip vinyl or similar capped and coved flooring to changing rooms.
- Sports floor to be Gerflor Traflex shock absorbing cushioned flooring or similar. With appropriate line markings to accommodate multi sports use

#### **External Works and Surfacing**

- The car parking aisle and bays are to be surfaced in a tarmac type construction, new paths and pedestrian areas are to be paved and suitably drained
- New bin store areas are to be provided
- Parking bays are to be marked out and in number sufficient for intended use and include disabled parking bays

#### **Quality and workmanship**

- At all times and in every aspect of this project the contractor will be expected to employ people who are appropriately skilled and experienced for the type and quality of work

#### **Furniture and fittings**

- Hand basin, hand drier and WC
- Coats hooks fixed to wall above benching.
- Secure locker space for all players to be provided within reception area
- Cubicles, lockers and benching to be constructed of solid grade laminate.
- Boot cleaning facilities such as brushes or scrapers immediately outside external access

#### **Officials Changing Rooms**

- Referees must have separate changing and shower facilities to the players. A lockable room with bench seating, coat and towel hooks suitable for three officials with one shower.
- Secure storage for valuables should be provided, possibly in the form of a lockable cupboard

### **Corridor/circulation**

- Corridors will be at least 1.8m wide to accommodate passing players with kit bags or a wheelchair turning circle. The central circulation provides for all users with good access to the playing areas.
- Players to have easy access to the pitch through areas with floor finishes suitable for stud trainers/boots.

### **Incoming Services**

- The services room to be appropriately sized and located to accommodate incoming utilities, plant equipment and boilers. Allow enough space for inspection and maintenance of the equipment.

### **Refuse area**

- The waste strategy to be considered at the design stage and suitable provision made for both general and recycled waste separation, storage and collection. To the sports hall

### **Mechanical Installation**

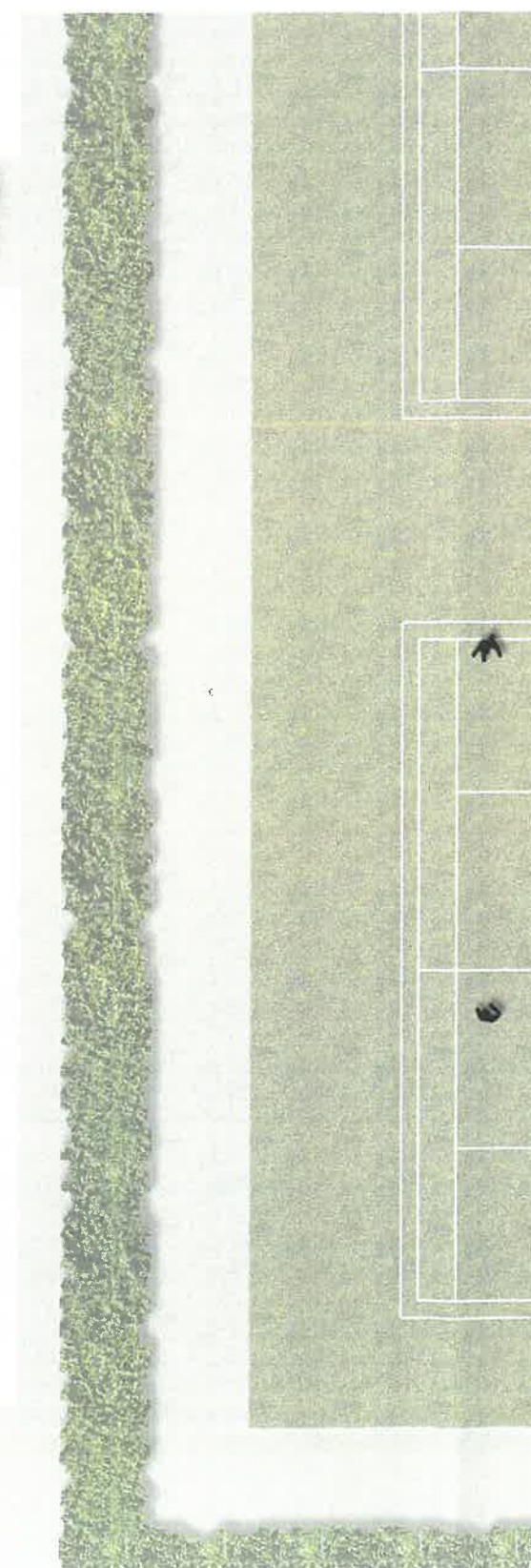
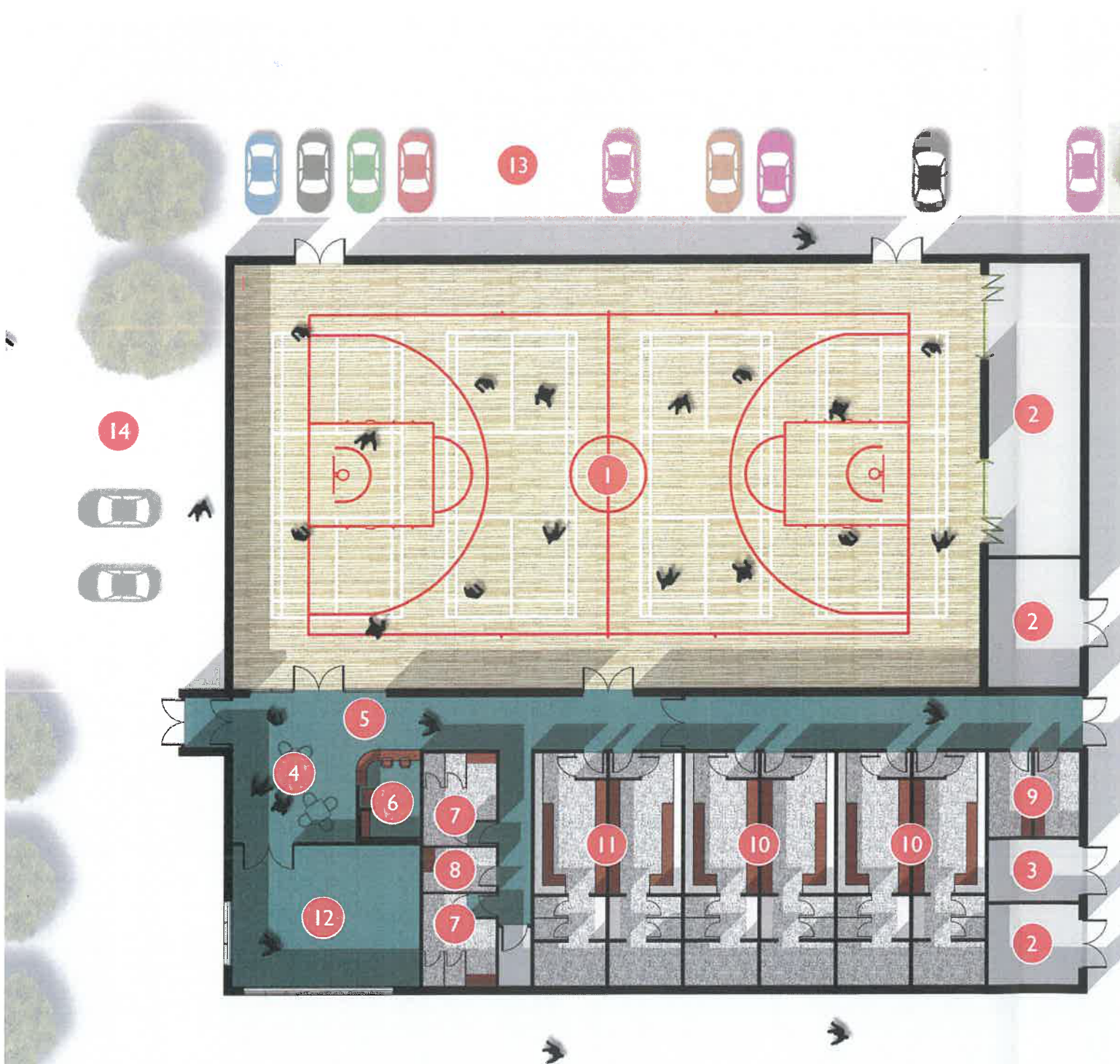
- Central heating – either by:
  - radiators,
  - ceiling panels
  - under-floor heating.
- Heavy duty time flow shower controls to a fix shower head.
- Stainless drinks fountain.
- The choice might be influenced by the heat source or boiler. Mechanical ventilation extraction is required for the showers, toilets and kitchens under the building regulations.

### **Electrical Installation**

- Low energy lighting proposed to reduce running costs, including proximity sensors (PIR) to turn lights on automatically upon sensing movement and switch them off after a period of inactivity.
- All lighting to follow the design parameters of the current CIBSE Code
- Wifi points to be installed within the building – providing good coverage throughout
- Intruder Alarm shall include passive infrared motion detectors installed in suitable locations and all external exit doors and sufficient sounders to be clearly audible throughout the building.
- An L1 electrically operated fire alarm system shall be installed with manual call points situated adjacent doors and sufficient sounders to be clearly audible throughout the building.

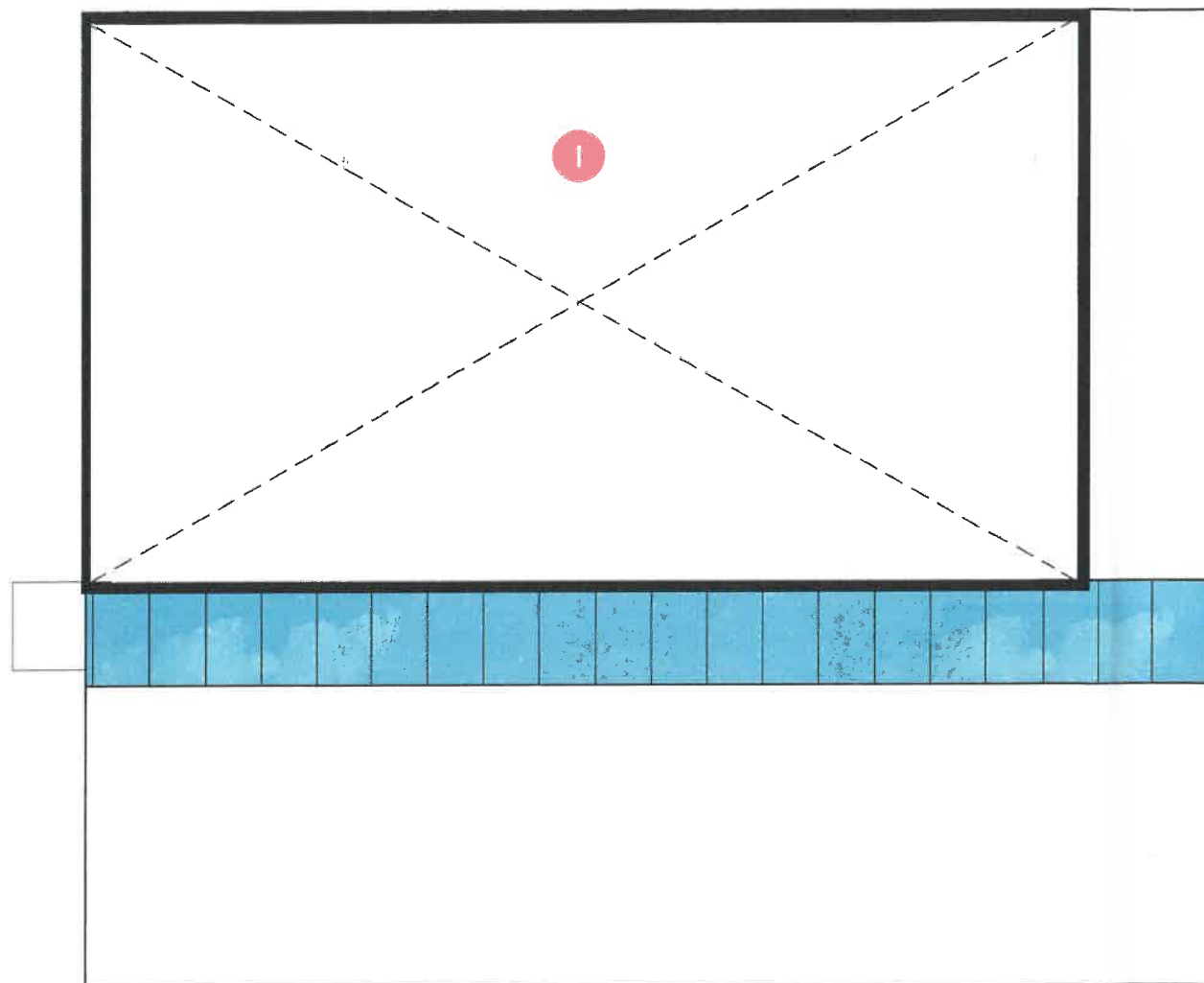
- External lighting to be provided to assist safe access from the pavilion to the boundary and across the car park at night. Light fittings to be selected to reduce light pollution.





- 1 Four - court sports hall
- 2 Equipment store
- 3 Plant
- 4 Lobby / circulation
- 5 Informal viewing area
- 6 Reception with office area
- 7 WC
- 8 Disabled WC
- 9 Officials changing
- 10 20-person male or female changing rooms
- 11 17-person male or female changing rooms
- 12 Multifunctional room
- 13 Car park
- 14 Disabled parking

 Void over sports hall



South Worcester  
Sports Hall  
Welbeck Strategic Land LLP



Drawing No. 00454\_SK\_020F  
Scale @ A3 1:250 Rev E





## **APPENDIX 6**

### **Management Organisation Governance Structure**

The Management Organisation shall be responsible for providing and delivering the Community Facilities Purposes and shall provide the relevant expertise to competently manage the Community Facilities for the community in accordance with the Community Facilities Management Plan.

The Management Organisation shall be structured to provide:

- Details of appropriate governance arrangements, structures, voting rights, management stakeholder agreement, details of scope and long term funding mechanisms to ensure the sustainable management of the Community Facilities;
- Details of how the Service Charge and Rental Income will be applied and collected to fund the ongoing management of the Community Facilities;
- The proposals for funding long term management and maintenance of the Community Facilities which shall incorporate in perpetuity costing for management, community engagement, annual maintenance operations, cyclical operations, replacement costs for capital items at the end of their lifecycle;
- Governance arrangements which require consultation with stakeholders in the Development, including the residents of the Dwellings and care home, Registered Providers, occupiers of the Employment Land and Local Centre, the District Council, Wychavon District Council, the City Council, the County Council, the Parish Council, Norton Juxta Kempsey Parish Council, and St Peter The Great County Parish Council in accordance with the Local Engagement Strategy;
- Governance arrangements which provide that if:
  - following the practical completion of the 1,500<sup>th</sup> Dwelling, 80% of the parties obligated to pay the Service Charge consider the management of the Community Facilities is not being adequately carried out in accordance with the Community Facilities Management Plan; and
  - written notice is duly served on the Management Organisation explaining the alleged failure in the management of the Community Facilities, proposing a reasonable timeframe for remedying the same (which shall in any event be not less than 3 months, unless the issue relates to matters of public safety in which case the notice period may

be shorter, or unless any works likely to be required to remedy the said failure may be affected by seasonal constraints in which case the notice period may be longer), giving details of a representative of the payees of the Service Charge with whom the Management Organisation should liaise on the matter and evidencing that the required 80% of payees have approved the details of the said notice

the Management Organisation shall liaise with the named representative to agree a scope and programme of the works to remedy the failure (unless it is agreed by the payers, the District Council, and the Management Organisation that there is no failure) and shall subsequently carry out the said works within the agreed timescale

PROVIDED THAT in the event that there is a failure to complete the agreed works to the required standard within the agreed timescale and in the event that 80% of the payers of the Service Charge agree, another entity which meets the definition of a Management Organisation which has been approved in writing by the District Council shall be appointed and the Management Organisation shall transfer the Community Facilities, all rights to receive the Service Charge and Rental Income and any other funding directly related to the Development, and all funds held in the Management Organisation Account (after payment of reasonably incurred liabilities) to the approved new Management Organisation as soon as reasonably practicable on the District Council's request, such transfer of the Community Facilities to be for the sum of £1

- The right to vary the Service Charge and retain rights to discount and vary exemptions in accordance with the Service Charge Increase Provisions;
- A community engagement strategy which includes a sample 'Introductory Information' for residents and the delivery of outputs for the local community including health, education, environmental, social cohesion and economic benefits; and
- A statement regarding auditing processes it operates

**APPENDIX 7**  
**Collateral Warranties**

Dated

20

**[Consultant] (1)**

**and**

**[Beneficiary] (2)**

**and**

**[Employer][Contractor] (3)**

## **CONSULTANT'S DEED OF COLLATERAL WARRANTY**

relating to the [refurbishment and] construction of

[ ]

THIS DEED is made the                      day of                      201[ ]

**BETWEEN:**

- (1) **[CONSULTANT]** registered in England and Wales with company number **[NUMBER]** whose registered office is at **[ADDRESS]** (the "Consultant"); and
- (2) **[BENEFICIARY]** (registered number [ ] ) whose registered office is at at [ ] **[BENEFICIARY/FUNDER DETAILS]** (the "Beneficiary"), (which expression shall include his successors in title and assigns); and
- (3) **[INSERT]** a company registered in the UK, with company number: **[INSERT]** and a Registered Charity Number: **[INSERT]** whose registered office is at **[INSERT]** **[[CONTRACTOR DETAILS AS EMPLOYER FOR THE CONSULTANT EITHER BY NOVATION OR DIRECT APPOINTMENT]** ("the Employer");

**WHEREAS:**

- (A) By an agreement dated [ ] (the "Building Contract"), and includes any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise, **[CONTRACTOR DETAILS]**["the Contractor"]**[the Employer]** has agreed with **[the Employer]****[the Beneficiary]** to design, carry out and complete the construction of certain works (the "Contract Works") for the development OF **[INSERT]** (the "Development") at **[INSERT]** (the "Property").
- (B) **[The Beneficiary has entered into a finance agreement dated [ ] with the [Employer] for funding associated with the Works and the Property]****[The Beneficiary is the employer under the Building Contract]** **[the Beneficiary is a local authority]** **[the Beneficiary is a community interest company who will own and manage the property for the benefit of the estate community and the people of Worcestershire].**
- (C) The **[BENEFICIARY]****[EMPLOYER]** has entered into an agreement with the Consultant dated [ ] to undertake **[the design of certain elements of and ]****[the role of Structural Engineer/Mechanical and Electrical Engineer/Architect/Project Manager/CDM Coordinator/Services Engineer/Contract Administrator/Quantity Surveyor]** ("the Services") at the Development ("the Appointment")
- [(D) The Employer has novated the Appointment of the Consultant to the [Contractor][Employer] by a novation dated [ ]]**

**[(D)][(E)]** The Consultant has agreed to enter into this Deed for the benefit of the Beneficiary and its successors in title and its assigns.

**NOW THIS DEED WITNESSES IN CONSIDERATION OF THE PAYMENT OF £10 BY THE BENEFICIARY TO THE CONSULTANT, RECEIPT OF WHICH THE CONSULTANT ACKNOWLEDGES AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

1.1 The definitions set out in the recitals apply to this Deed.

"Funder"	includes a person providing finance and/or taking a charge over or in connection with the Development or any part of it and/or the Property;
"Limitation Period"	means the period of 12 years from the date of issue of the Certificate of Practical Completion in respect of whole of the Works, as established pursuant to and for the purposes of the Building Contract.

- |                        |  |
|------------------------|--|
| “Practical Completion” | means the date of Practical Completion of the whole of the Development as certified by the Employer’s agent or otherwise evidenced as required under the terms of the Building Contract; |
| “Purchaser”            | includes a person having or acquiring a freehold interest in the Development or any part of it, and includes a purchaser for a capital consideration of a leasehold interest;            |
| “Tenant”               | includes a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).  |
- 1.2 In this Deed:
- 1.2.1 any reference to a person, firm or company includes any entity which has legal capacity;
- 1.2.2 any term importing gender shall include any gender;
- 1.2.3 any term importing the singular includes the plural and vice versa; and
- 1.2.4 any reference to a clause or schedule is a reference to such clause or schedule of this Deed.
- 1.3 Clause headings are for convenience only and do not form part of or affect the interpretation of this Deed.
- 2 DUTY OF CARE**
- 2.1 The Consultant warrants to the Beneficiary that it has:
- 2.1.1 carried out and completed or will carry out and complete the Services with all due diligence, in accordance with and subject to the terms of the Appointment; and
- 2.1.2 observed and performed and will observe and perform all of its duties and obligations set out in or arising out of the Appointment; and
- 2.1.3 exercised and will exercise all reasonable skill, care and diligence in the provision of the Services.
- 2.2 The Consultant further warrants to the Beneficiary that:
- 2.2.1 he has exercised and will exercise all the reasonable skill and care to be expected of a duly qualified and experienced designer undertaking works similar in scope, location and complexity to the Development, the Contract Works and the Services, in:
- 2.2.1.1 the design of any part or parts of the Development and of the Contract Works to the extent that the Consultant has been or will be responsible for and undertaken such design; and
- 2.2.1.2 the selection of goods and materials for the Contract Works or any part or parts of the Development to the extent that such goods and materials have been or will be selected or specified for use by or on behalf of the Consultant;
- 2.2.2 the Contract Works will, on completion of the Development, satisfy all performance specifications and other requirements contained or referred to in the Building Contract and the Appointment;<sup>1</sup>

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<sup>1</sup> Remove this clause and clause 3.1 for QS and CDM Coordinator if no design responsibility

- 2.3 This deed shall continue in full force and effect notwithstanding the determination of the Appointment for any reason.
- 2.4 Save as provided for under clause 4 [step in] below, the provisions of this deed do not constitute the acceptance of an obligation by the Consultant to the Beneficiary to carry out or complete the Services nor an acceptance of an obligation by Beneficiary to pay or otherwise become liable to the Consultant for carrying out or completing the Services and the warranty given under this clause is a warranty of compliance only.

### **3 PROHIBITED MATERIALS**

- 3.1 The Consultant warrants that, to the extent it either is obliged to specify or approve products or materials for use in the Contract Works or does so specify or approve, it has not and will not specify, approve or use any products or materials;
- 3.1.1 which by their nature or application contravene any British Standard or EU equivalent;
- 3.1.2 which contravene the recommendations of British Council for Offices' publication Good Practice in the Selection of Construction Materials (current at the date of the Contract Works);
- 3.1.3 which do not comply with good building practice; or
- 3.1.4 which are considered to be deleterious within the building design professions.
- 3.2 If in the performance of its duties under the Appointment, the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others, of any such products or materials the Consultant will immediately give the Beneficiary written notice of the same. This clause 3.2 does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

### **4 OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT**

- 4.1 The Consultant warrants to the Beneficiary that it will not exercise nor seek to exercise any right of termination of the Appointment or to discontinue the performance of any of its obligations thereunder for any reason whatsoever (including any breach on the part of the Employer) without giving not less than 28 days written notice of his intention to do so and specifying the grounds for the proposed termination or discontinuance.
- 4.2 Any period stipulated in the Appointment for the exercise of a right of termination shall, nevertheless, be amended as may be necessary to take account of the period of notice required under clause 4.1.
- 4.3 The right of the Consultant to terminate the Appointment shall cease within the period of 28 days referred to in clause 4.1 if the Beneficiary shall give notice to the Consultant:
- 4.3.1 requiring the Consultant to continue its obligations under the Appointment with the Beneficiary;
- 4.3.2 acknowledging that the Beneficiary will assume all the obligations of the Employer under the Appointment; and
- 4.3.3 undertaking that the Beneficiary will discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment and will pay to the Consultant any sums which have been due and payable to him thereunder but which remain unpaid.

- [4.3A] The Consultant agrees that, in the event of termination of any finance agreement between the Employer and the Beneficiary by either party or breach by the Employer of such a finance agreement before completion of the Services or the Contract Works, the Beneficiary may give notice to the Consultant:
- 4.3A.1 requiring the Consultant to continue its obligations under the Appointment with the Beneficiary;
- 4.3A.2 acknowledging that the Beneficiary will assume all the obligations of the Employer under the Appointment; and
- 4.3A.3 undertaking that the Beneficiary will discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment and will pay to the Consultant any sums which have been due and payable to him thereunder but which remain unpaid.]CIC/COUNCIL ONLY
- 4.4 Upon compliance by the Beneficiary with the requirements of clause 4.3 [or 4.3A] the Appointment will continue in full force and effect as if the same had been entered into between the Consultant and the Beneficiary to the exclusion of the Employer.
- 4.5 Compliance by the Consultant with the provisions of clause 4.3 [or 4.3A] will not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination or otherwise prevent the Consultant from exercising his rights after the expiration of the notice unless the rights of termination have ceased under the provisions of clause 4.3 [or 4.3A]
- 4.6 As from the date of service of notice under Clause 4.3 [or 4.3A], the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Employer under the Appointment, provided that this shall not affect or derogate from any right of action the Employer may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening prior to the date of service of notice by the Beneficiary under Clause 4.3 [or 4.3A].
- 4.7 If the employment of the Consultant under the Appointment is suspended, discontinued, or terminated before service of any notice under Clause 4.3 [or 4.3A], then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, discontinuance, or suspension the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal to the sum which, immediately before termination, suspension or discontinuance of the Consultant's employment, was then owing to the Consultant under the Appointment.
- 4.8 Upon payment by the Beneficiary in accordance with Clause 4.3, [4.3A] or 4.7 of an amount equal to the relevant sum owed from the Employer, the Consultant shall assign to the Beneficiary all the Consultant's rights against the Employer in respect of such unpaid sum, and shall pay to the Beneficiary any of the same subsequently received by it from the Employer.
- 4.9 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under Clause 4.3, [4.3A] or 4.7.
- 4.10 The Employer agrees to the foregoing provisions of this Clause 4 and agrees to be bound by them.
- 4.11 Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 4 to any other person then if both the Beneficiary and any such



other person serve notice under clause 4.3, [4.3A] or clause 4.7 or its equivalent the notice served by the Beneficiary shall [prevail][not prevail]<sup>2</sup>

## **5 ASSIGNMENT**

- 5.1 The Beneficiary may, freely assign all of its rights under this Deed:
- 5.1.1 to any mortgagee or Funder and by way of re-assignment on redemption; and
- 5.1.2 at any time to any Associated Company on giving written notice of such assignment to the Consultant. For the purpose of this Clause 5.1, "Associated Company" means in respect of the Beneficiary, a company which is a subsidiary, a holding company or a company which is a subsidiary of the holding company of the Beneficiary, where subsidiary and holding company have the meaning given to each of them in Section 1159 of the Companies Act 2006; and
- 5.1.3 by absolute assignment on two other occasions only.
- 5.2 In this Deed, references to the Beneficiary include where the context admits its permitted assignees.
- 5.3 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 5.1 or Clause 5.2 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

## **6 COPYRIGHT AND LICENCE TO USE DOCUMENTS**

- 6.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Consultant in the course of performing its obligations under the Appointment ("the Documents") will remain vested in the Consultant. For the purposes of this clause 6, "Intellectual Property" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 6.2 The Consultant grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Consultant's obligations or the termination of the Appointment or this Deed or the determination of the Consultant's engagement under the Appointment or any dispute under the Appointment or this Deed) to use and to reproduce all Documents for any purpose whatsoever connected with the Contract Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Contract Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties. Such licence shall enable the Beneficiary to copy and use the Documents for the extension of the Works.

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<sup>2</sup> CIC/Council's notice to prevail

- 6.3 The Consultant will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Appointment or under this Deed or as otherwise required to enable it to fulfil its obligations under the Appointment.
- 6.4 The Consultant will not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in clause 6.2.
- 6.5 The Consultant warrants that the Documents (save to the extent that duly authorised sub contractors or consultants have been used to prepare the same) are the Consultant's own original work and that in any event their use in connection with the Contract Works will not infringe the rights of any third party. The Consultant further warrants that where duly authorised sub-contractors are used their work will be original and that the Consultant will obtain the necessary consents in relation to clause 6.2.
- 6.6 The Consultant agrees on reasonable request at any time and following reasonable prior written notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies, in whatsoever format or formats that the Beneficiary shall require (including, inter alia, copy negatives and CAD disks), of the Documents.
- 6.7 The Consultant waives and agrees not to assert (and to procure that any sub-contractors do likewise) all moral rights in the Documents under Part 1 Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modification of it.

## **7 INDEMNITY INSURANCE**

- 7.1 The Consultant warrants to the Beneficiary that it has at all relevant times maintained and that there is in force a policy of and (so long as such insurance is available in the market) will continue to maintain for a period of 12 years after the date of issue of the Certificate of Practical Completion in respect of whole of the Works professional indemnity insurance with a reputable insurance company with a limit of indemnity not less than **£5,000,000 (Five million pounds)** arising out of each and every claim in any occurrence or series of occurrences to cover any claims made under the Appointment and this Deed or otherwise against the Consultant in relation to the Development.
- 7.2 As and when reasonably required by the Beneficiary the Consultant shall promptly produce for inspection satisfactory documentary evidence that the insurance referred to in Clause 7.1 is being properly maintained and confirm that payment has been made in respect of the last preceding premium due under it.
- 7.3 If for any periods such insurance cover is not available at commercial reasonable terms the Consultant shall notify the Beneficiary forthwith and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available.
- 7.4 If the Consultant is in breach of this Clause 7 or is insolvent, the Beneficiary shall be at liberty to effect such insurance cover (including, inter alia, inherent defects insurance) as it deems requisite and to recover the cost from the Consultant on demand.

## **8 OTHER RIGHTS**

- 8.1 This Deed shall not negate nor diminish any duty or liability otherwise owed by the Consultant to the Beneficiary or to the Employer.
- 8.2 No approval or inspection of the Works or of any designs or specifications nor any testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate nor diminish any duty or liability of the Consultant arising under this Deed.

- 8.3 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including, without limitation, any remedies in negligence.

## **9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Deed is not intended to confer any right on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 save as provided for under clause 5.

## **10 LIMITATION PERIOD**

- 10.1 The Beneficiary will be entitled to commence legal proceedings against the Consultant at any time up to the expiry of the Limitation Period. For the avoidance of doubt, the parties agree that any provision of the Limitation Act 1980 to the contrary will not apply to this deed.
- 10.2 Save in the event of step-in under clause 4, the Consultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Consultant from the Employer.

## **11 NOTICES**

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

## **12 GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

EXECUTED as a Deed on behalf of

**[CONSULTANT]**

by [ ] a director .....  
in the presence of:

Witness signature: .....

Witness name: .....

Witness address: .....

**Witness occupation:** .....

EXECUTED as a Deed on behalf of

**[THE EMPLOYER]**

by [ ] a director .....

in the presence of:

Witness signature: .....

Witness name: .....

Witness address: .....

**Witness occupation:** .....

EXECUTED as a Deed on behalf of

**[FUNDER][BENEFICIARY]**

Dated

20

**Party (1)**

**and**

**[BENEFICIARY] (2)**

**and**

**Party (3)**

## **CONTRACTOR'S DEED OF COLLATERAL WARRANTY**

relating to the construction of a development at the

[ ]

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THIS DEED is made the                      day of                      201[ ]

**BETWEEN:**

- (1) [                      ] registered in England and Wales with company number [                      ] whose registered office is at [                      ] (the "Contractor"); and
- (2) **[Beneficiary]** (Company Number [                      ]) whose registered office is at [                      ] (the "Beneficiary"), (which expression shall include his successors in title and assigns); and
- (3) [                      ] a company registered in the UK, with company number: [                      ] whose registered office is at [                      ] ("the Employer");

**WHEREAS:**

- (A) By an agreement **dated** [                      ] (the "Building Contract"), and includes any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise, the Contractor has agreed with the Employer to design, carry out and complete the construction of certain works (the "Contract Works") for the construction of a [development] (the "Development") **at** [                      ] (the **"Property"**).
- (B) [The Beneficiary is the Purchaser/Tenant of the Property or part thereof][The Beneficiary has a freehold or leasehold interest in the Property][The Beneficiary has entered into a finance agreement with the Employer for funding associated with the Works and the Property][BENEFICIARY is the Employer] [the Beneficiary is a local authority] [the Beneficiary is a community interest company who will own and manage the property for the benefit of the estate community and the people of Worcestershire]
- (C) The Contractor has agreed to enter into this Deed for the benefit of the Beneficiary and its successors in title and its assigns.

**NOW THIS DEED WITNESSES IN CONSIDERATION OF THE PAYMENT OF £10 BY THE BENEFICIARY TO THE CONTRACTOR, RECEIPT OF WHICH THE CONTRACTOR ACKNOWLEDGES AS FOLLOWS:**

**1                      DEFINITIONS AND INTERPRETATION**

- 1.1                      The definitions set out in the recitals apply to this Deed.

“Funder”	includes a person providing finance and/or taking a charge over or in connection with the Development or any part of it and/or the Property;
“Limitation Period”	means the period of 12 years from the date of Practical Completion of the Works, as established pursuant to and for the purposes of the Building Contract (or, if sooner, 12 years after termination of the employment of the Contractor under the Building Contract).
“Practical Completion”	means the date of Practical Completion of the whole of the Development as certified by the Employer’s agent or otherwise evidenced as required under the terms of the Building Contract;
“Purchaser”	includes a person having or acquiring a freehold interest in the Development or any part of it, and includes a purchaser for a capital consideration of a leasehold interest;
“Tenant”	includes a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

1.2 In this Deed:

- 1.2.1 any reference to a person, firm or company includes any entity which has legal capacity;
  - 1.2.2 any term importing gender shall include any gender;
  - 1.2.3 any term importing the singular includes the plural and vice versa; and
  - 1.2.4 any reference to a clause or schedule is a reference to such clause or schedule of this Deed.
- 1.3 Clause headings are for convenience only and do not form part of or affect the interpretation of this Deed.



## **2 DUTY OF CARE**

- 2.1 The Contractor warrants and undertakes to the Beneficiary that it has:
  - 2.1.1 carried out and completed or will carry out and complete the Contract Works with all due diligence, in accordance with and subject to the terms of the Building Contract; and
  - 2.1.2 observed and performed and will observe and perform all of its duties and obligations set out in or arising out of the Building Contract; and
  - 2.1.3 exercised and will exercise all reasonable skill, care and diligence in the construction of the Contract Works.
- 2.2 The Contractor further warrants and undertakes to the Beneficiary that:
  - 2.2.1 he has exercised and will exercise all the reasonable skill and care to be expected of a duly qualified and experienced designer undertaking works similar in scope, location and complexity to the Contract Works, in:
    - 2.2.1.1 the design of the Contract Works and of any part or parts of the Development to the extent that the Contractor has been or will be responsible for such design; and
    - 2.2.1.2 the selection of goods and materials for the Contract Works or any part or parts of the Development to the extent that such goods and materials have been or will be selected by or on behalf of the Contractor;
  - 2.2.2 the Contract Works will, on completion of the Development, satisfy all performance specifications and other requirements contained or referred to in the Building Contract;
  - 2.2.3 the Contract Works and all materials and goods comprised in them will correspond as to description, quality and condition with the requirements of the Building Contract and will be of sound manufacture and workmanship; and
  - 2.2.4 the Contract Works will, on completion of the Development, comply with all applicable statutory requirements.
- 2.3 This deed shall continue in full force and effect notwithstanding the determination of the Building Contract for any reason.

- 2.4 Save as provided for under clause 4 [step in] below, the provisions of this deed do not constitute the acceptance of an obligation by the Contractor to the Beneficiary to carry out or complete the Contract Works nor an acceptance of an obligation by Beneficiary to pay or otherwise become liable to the Contractor for carrying out or completing the Contract Works and the warranty given under this clause is a warranty of compliance only.

### **3 PROHIBITED MATERIALS**

- 3.1 The Contractor warrants that, to the extent it either is obliged to specify or approve products or materials for use in the Contract Works or does so specify or approve, it has not and will not specify, approve or use any products or materials;
- 3.1.1 which by their nature or application contravene any British Standard or EU equivalent;
- 3.1.2 which contravene the recommendations of British Council of Offices' publication Good Practice in the Selection of Construction Materials (current at the date of the Contract Works);
- 3.1.3 which do not comply with good building practice; or
- 3.1.4 which are considered to be deleterious within the building design professions.
- 3.2 If in the performance of its duties under the Building Contract, the Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others, of any such products or materials the Contractor will immediately give the Beneficiary written notice of the same. This clause 3.2 does not create any additional duty for the Contractor to inspect or check the work of others which is not required by the Building Contract.

### **4 OBLIGATIONS PRIOR TO TERMINATION OF THE BUILDING CONTRACT**

- 4.1 The Contractor warrants to the Beneficiary that it will not exercise nor seek to exercise any right of termination of the Building Contract or to discontinue the performance of any of its obligations thereunder for any reason whatsoever (including any breach on the part of the Employer) without giving not less than 28 days written notice of his intention to do so and specifying the grounds for the proposed termination or discontinuance.

- 4.2 Any period stipulated in the Building Contract for the exercise of a right of termination shall, nevertheless, be amended as may be necessary to take account of the period of notice required under clause 4.1.
- 4.3 The right of the Contractor to terminate the Building Contract shall cease within the period of 28 days referred to in clause 4.1 if the Beneficiary shall give notice to the Contractor:
- 4.3.1 requiring the Contractor to continue its obligations under the Building Contract with the Beneficiary;
- 4.3.2 acknowledging that the Beneficiary will assume all the obligations of the Employer under the Building Contract; and
- 4.3.3 undertaking that the Beneficiary will discharge all payments which may subsequently become due to the Contractor under the terms of the Building Contract and will pay to the Contractor any sums which have been due and payable to him thereunder but which remain unpaid.
- [4.3A The Contractor agrees that, in the event of termination or breach of any finance agreement between the Employer and the Beneficiary by either party or breach of such a finance agreement before completion of the Works, the Beneficiary may give notice to the Contractor:
- 4.3A.1 requiring the Contractor to continue its obligations under the Building Contract for benefit the Beneficiary;
- 4.3A.2 acknowledging that the Beneficiary will assume all the obligations of the Employer under the Building Contract; and
- 4.3A.3 undertaking that the Beneficiary will discharge all payments which may subsequently become due to the Contractor under the terms of the Building Contract and will pay to the Contractor any sums which have been due and payable to him thereunder but which remain unpaid] CIC/COUNCIL ONLY
- 4.4 Upon compliance by the Beneficiary with the requirements of clause 4.3 [or 4.3A] the Building Contract will continue in full force and effect as if the same had been entered into between the Contractor and the Beneficiary to the exclusion of the Employer.

- 4.5 Compliance by the Contractor with the provisions of clause 4.3 [or 4.3A] will not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination or otherwise prevent the Contractor from exercising his rights after the expiration of the notice unless the rights of termination have ceased under the provisions of clause 4.3 [or 4.3A].
- 4.6 As from the date of service of notice under Clause 4.3 [or 4.3A], the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Employer under the Building Contract, provided that this shall not affect or derogate from any right of action the Employer may have against the Contractor in respect of any breach of duty of the Contractor under or in connection with the Building Contract happening prior to the date of service of notice by the Beneficiary under Clause 4.3 [or 4.3A].
- 4.7 If the employment of the Contractor under the Building Contract is suspended, discontinued, or terminated before service of any notice under Clause 4.3 [or 4.3A], then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, discontinuance, or suspension the Contractor shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Building Contract but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Contractor an amount equal to the sum which, immediately before termination, suspension or discontinuance of the Contractor's employment, was then owing to the Contractor under the Building Contract.
- 4.8 Upon payment by the Beneficiary in accordance with Clause 4.3 [or 4.3A] or 4.7 of an amount equal to the relevant sum owed from the Employer, the Contractor shall assign to the Beneficiary all the Contractor's rights against the Employer in respect of such unpaid sum, and shall pay to the Beneficiary any of the same subsequently received by it from the Employer.
- 4.9 The Beneficiary guarantees to the Contractor the performance of the obligations of any appointee of the Beneficiary nominated under Clause 4.3 [or 4.3A] or 4.7.
- 4.10 The Employer agrees to the foregoing provisions of this Clause 4 and agrees to be bound by them.

- 4.11 Where the Contractor has given rights in relation to the Contract similar to those contained in this clause 4 to any other person then if both the Beneficiary and any such other person serve notice under clause 4.3 [or 4.3A] or clause 4.7 or its equivalent the notice served by the Beneficiary [shall] [shall not] prevail.

## **5 ASSIGNMENT**

- 5.1 The Beneficiary may, freely assign all of its rights under this Deed:
- 5.1.1 to any mortgagee or Funder and by way of re-assignment on redemption; and
- 5.1.2 at any time to any Associated Company on giving written notice of such assignment to the Contractor. For the purpose of this Clause 5.1, "Associated Company" means in respect of the Beneficiary, a company which is a subsidiary, a holding company or a company which is a subsidiary of the holding company of the Beneficiary, where subsidiary and holding company have the meaning given to each of them in Section 1159 of the Companies Act 2006; and
- 5.1.3 by absolute assignment on two other occasions only.
- 5.2 In this Deed, references to the Beneficiary include where the context admits its permitted assignees.
- 5.3 The Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 5.1 or Clause 5.2 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

## **6 COPYRIGHT AND LICENCE TO USE DOCUMENTS**

- 6.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Contractor in the course of performing its obligations under the Building Contract ("the Documents") will remain vested in the Contractor. For the purposes of this clause 6, "Intellectual Property" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the

world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.

- 6.2 The Contractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Contractor's obligations or the termination of the Building Contract or this Deed or the determination of the Contractor's engagement under the Building Contract or any dispute under the Building Contract or this Deed) to use and to reproduce all Documents for any purpose whatsoever connected with the Contract Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Contract Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties. Such licence shall enable the Beneficiary to copy and use the Documents for the extension of the Works.
- 6.3 The Contractor will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Building Contract or under this Deed or as otherwise required to enable it to fulfil its obligations under the Building Contract.
- 6.4 The Contractor will not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in clause 6.2.
- 6.5 The Contractor warrants that the Documents (save to the extent that duly authorised sub contractors or consultants have been used to prepare the same) are the Contractor's own original work and that in any event their use in connection with the Contract Works will not infringe the rights of any third party. The Contractor further warrants that where duly authorised sub-contractors are used their work will be original and that the Contractor will obtain the necessary consents in relation to clause 6.2.
- 6.6 The Contractor agrees on reasonable request at any time and following reasonable prior written notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies, in whatsoever format or formats

that the Beneficiary shall require (including, inter alia, copy negatives and CAD disks), of the Documents.

- 6.7 The Contractor waives and agrees not to assert (and to procure that any sub-contractors do likewise) all moral rights in the Documents under Part 1 Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modification of it.

## **7 INDEMNITY INSURANCE**

- 7.1 The Contractor warrants to the Beneficiary that it has at all relevant times maintained and that there is in force a policy of and (so long as such insurance is available in the market) will continue to maintain for a period of 12 years after Practical Completion:

- 7.1.1 professional indemnity insurance with a reputable insurance company with a limit of indemnity not less than £5,000,000 (Five million pounds) arising out of each and every claim in any occurrence or series of occurrences to cover any claims made under the Building Contract and this Deed or otherwise against the Contractor in relation to the Development; and

- 7.1.2 "contractor's all risks" and public liability insurances for the maximum sums insured as required by the terms of the Building Contract. The Contractor shall not by any act deed default or omission by it or its employees servants or agents allow such insurance to be invalidated or prejudiced in any way.

- 7.2 As and when reasonably required by the Beneficiary the Contractor shall promptly produce for inspection satisfactory documentary evidence that the insurance referred to in Clause 7.1 is being properly maintained and confirm that payment has been made in respect of the last preceding premium due under it.

- 7.3 If for any periods such insurance cover is not available at commercial reasonable terms the Contractor shall notify the Beneficiary forthwith and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available.

- 7.4 If the Contractor is in breach of this Clause 7 or is insolvent, the Beneficiary shall be at liberty to effect such insurance cover (including, inter alia, inherent defects

insurance) as it deems requisite and to recover the cost from the Contractor on demand.

## **8 OTHER RIGHTS**

- 8.1 This Deed shall not negate nor diminish any duty or liability otherwise owed by the Contractor to the Beneficiary or to the Employer.
- 8.2 No approval or inspection of the Works or of any designs or specifications nor any testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate nor diminish any duty or liability of the Contractor arising under this Deed.
- 8.3 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including, without limitation, any remedies in negligence.

## **9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Deed is not intended to confer any right on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 save as provided for under clause 5

## **10 LIMITATION PERIOD**

- 10.1 The Beneficiary will be entitled to commence legal proceedings against the Contractor at any time up to the expiry of the Limitation Period. For the avoidance of doubt, the parties agree that any provision of the Limitation Act 1980 to the contrary will not apply to this deed.
- 10.2 Save in the event of step-in under clause 4, the Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Contractor from the Employer.

## **11 NOTICES**

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if



given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

## **12 GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

EXECUTED as a Deed on behalf of

[ ]

by [ ] a director .....

in the presence of:

Witness signature: .....

Witness name: .....

Witness address: .....

.....

.....

Witness occupation: .....

EXECUTED as a Deed on behalf of

[ ]

by [ ] a director

in the presence of:

Witness signature: .....

Witness name: .....

Witness address: .....

.....

.....

Witness occupation: .....

EXECUTED as a Deed on behalf of **[BENEFICIARY][FUNDER]**

Dated

20

**[SUB-CONTRACTOR] (1)**

**and**

**[BENEFICIARY] (2)**

**and**

**[CONTRACTOR] (3)**

## **SUB-CONTRACTOR'S DEED OF COLLATERAL WARRANTY**

relating to the construction of a

[ ]

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THIS DEED is made the                      day of                      201[ ]

**BETWEEN:**

- (1) **[SUB-CONTRACTOR]** registered in England and Wales with company number [NUMBER] whose registered office is at [ADDRESS] (the "Sub-Contractor"); and
- (2) **[Beneficiary]** (registered number [ ] ) whose registered office is at [ ] [[insert] [BENEFICIARY DETAILS] (the "Beneficiary"), (which expression shall include his successors in title and assigns); and
- (3) **[CONTRACTOR]** registered in England and Wales with company number [NUMBER] whose registered office is at [ADDRESS] (the "Contractor");

**WHEREAS:**

- (A) By an agreement dated [ ] (the "Building Contract"), and includes any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise, the Contractor has agreed with [insert] a company registered in the UK, with company number [ ] ("the Employer") to design, carry out and complete the construction of certain works (the "Contract Works") for the development of a [insert] (the "Development") at [insert property address] (the "Property").
- (B) By an agreement dated [ ] ("the Sub Contract") and includes any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise, the Sub-Contractor has agreed with the Contractor to design, carry out and complete the construction of certain works (the "Sub Contract Works") for the Development
- (C) [BENEFICIARY is the Employer] [the Beneficiary is a local authority] [the Beneficiary is a community interest company who will own and manage the property for the benefit of the estate community and the people of Worcestershire]
- (D) The Sub-Contractor has agreed to enter into this Deed for the benefit of the Beneficiary and its successors in title and its assigns.

NOW THIS DEED WITNESSES IN CONSIDERATION OF THE PAYMENT OF £10 BY THE BENEFICIARY TO THE SUB-CONTRACTOR, RECEIPT OF WHICH THE SUB-CONTRACTOR ACKNOWLEDGES AS FOLLOWS:

## **1 DEFINITIONS AND INTERPRETATION**

1.1 The definitions set out in the recitals apply to this Deed.

“Funder” includes a person providing finance and/or taking a charge over or in connection with the Development or any part of it and/or the Property;

“Limitation Period” means the period of 12 years from the date of issue of the Certificate of Practical Completion in respect of whole of the Works, as established pursuant to and for the purposes of the Building Contract.

“Practical Completion” means the date of Practical Completion of the whole of the Development as certified by the Employer’s agent or otherwise evidenced as required under the terms of the Building Contract;

“Purchaser” includes a person having or acquiring a freehold interest in the Development or any part of it, and includes a purchaser for a capital consideration of a leasehold interest;

“Tenant” includes a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

1.2 In this Deed:

1.2.1 any reference to a person, firm or company includes any entity which has legal capacity;

1.2.2 any term importing gender shall include any gender;

- 1.2.3 any term importing the singular includes the plural and vice versa; and
- 1.2.4 any reference to a clause or schedule is a reference to such clause or schedule of this Deed.
- 1.3 Clause headings are for convenience only and do not form part of or affect the interpretation of this Deed.

## **2 DUTY OF CARE**

- 2.1 The Sub-Contractor warrants to the Beneficiary that it has:
  - 2.1.1 carried out and completed or will carry out and complete the Sub Contract Works with all due diligence, in accordance with the terms of the Sub Contract; and
  - 2.1.2 observed and performed and will observe and perform all of its duties and obligations set out in or arising out of the Sub Contract; and
  - 2.1.3 exercised and will exercise all reasonable skill, care and diligence in the construction of the Sub Contract Works.
- 2.2 The Sub-Contractor further warrants to the Beneficiary that:
  - 2.2.1 he has exercised and will exercise all the reasonable skill and care to be expected of a duly qualified and experienced designer undertaking works similar in scope, location and complexity to the Sub Contract Works, in:
    - 2.2.1.1 the design of the Sub Contract Works and of any part or parts of the Development to the extent that the Sub-Contractor has been or will be responsible for such design; and
    - 2.2.1.2 the selection of goods and materials for the Sub Contract Works or any part or parts of the Development to the extent that such goods and materials have been or will be selected by or on behalf of the Sub-Contractor;
  - 2.2.2 the Sub Contract Works will, on completion of the Development, satisfy all performance specifications and other requirements contained or referred to in the Building Contract and the Sub Contract;

- 2.2.3 the Sub Contract Works and all materials and goods comprised in them will correspond as to description, quality and condition with the requirements of the Building Contract and the Sub Contract and will be of sound manufacture and workmanship; and
- 2.2.4 the Sub Contract Works will, on completion of the Development, comply with all applicable statutory requirements.
- 2.3 This deed shall continue in full force and effect notwithstanding the determination of the Sub Contract for any reason.
- 2.4 Save as provided for under clause 4 [step in] below, the provisions of this deed do not constitute the acceptance of an obligation by the Sub-Contractor to the Beneficiary to carry out or complete the Sub Contract Works nor an acceptance of an obligation by Beneficiary to pay or otherwise become liable to the Sub-Contractor for carrying out or completing the Sub Contract Works and the warranty given under this clause is a warranty of compliance only.

### **3 PROHIBITED MATERIALS**

- 3.1 The Sub-Contractor warrants that, to the extent it either is obliged to specify or approve products or materials for use in the Sub Contract Works or does so specify or approve, it has not and will not specify, approve or use any products or materials;
  - 3.1.1 which by their nature or application contravene any British Standard or EU equivalent;
  - 3.1.2 which contravene the recommendations of British Council for Offices/Ove Arup & Partners' publication Good Practice in the Selection of Construction Materials (current at the date of the Sub Contract Works);
  - 3.1.3 which do not comply with good building practice; or
  - 3.1.4 which are considered to be deleterious within the building design professions.
- 3.2 If in the performance of its duties under the Sub Contract, the Sub-Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others, of any such products or materials the



Sub-Contractor will immediately give the Beneficiary written notice of the same. This clause 3.2 does not create any additional duty for the Sub-Contractor to inspect or check the work of others which is not required by the Sub Contract.

#### **4 OBLIGATIONS PRIOR TO TERMINATION OF THE BUILDING CONTRACT**

- 4.1 The Sub-Contractor warrants to the Beneficiary that it will not exercise nor seek to exercise any right of termination of the Sub Contract or to discontinue the performance of any of its obligations thereunder for any reason whatsoever (including any breach on the part of the Contractor) without giving not less than 28 days written notice of his intention to do so and specifying the grounds for the proposed termination or discontinuance.
- 4.2 Any period stipulated in the Sub Contract for the exercise of a right of termination shall, nevertheless, be amended as may be necessary to take account of the period of notice required under clause 4.1.
- 4.3 The right of the Sub-Contractor to terminate the Sub Contract shall cease within the period of 28 days referred to in clause 4.1 if the Beneficiary shall give notice to the Sub-Contractor:
- 4.3.1 requiring the Sub-Contractor to continue its obligations under the Sub Contract with the Beneficiary;
  - 4.3.2 acknowledging that the Beneficiary will assume all the obligations of the Contractor under the Sub Contract; and
  - 4.3.3 undertaking that the Beneficiary will discharge all payments which may subsequently become due to the Sub-Contractor under the terms of the Sub Contract and will pay to the Sub-Contractor any sums which have been due and payable to him thereunder but which remain unpaid.
- [4.3A The Sub-Contractor agrees that, in the event of termination or breach of any finance agreement between the Employer and the Beneficiary by either before completion of the Sub Contract Works, the Beneficiary may give notice to the Sub-Contractor:
- 4.3.1 requiring the Sub-Contractor to continue its obligations under the Sub Contract with the Beneficiary;

- 4.3.2 acknowledging that the Beneficiary will assume all the obligations of the Contractor under the Sub Contract; and
- 4.3.3 undertaking that the Beneficiary will discharge all payments which may subsequently become due to the Sub-Contractor under the terms of the Sub Contract and will pay to the Sub-Contractor any sums which have been due and payable to him thereunder but which remain unpaid]CIC/COUNCIL ONLY
- 4.4 Upon compliance by the Beneficiary with the requirements of clause 4.3 [or 4.3A] the Sub Contract will continue in full force and effect as if the same had been entered into between the Sub-Contractor and the Beneficiary to the exclusion of the Contractor.
- 4.5 Compliance by the Sub-Contractor with the provisions of clause 4.3 [or 4.3A] will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination or otherwise prevent the Sub-Contractor from exercising his rights after the expiration of the notice unless the rights of termination have ceased under the provisions of clause 4.3 [or 4.3A].
- 4.6 As from the date of service of notice under Clause 4.3 [or 4.3A], the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Contractor under the Sub Contract, provided that this shall not affect or derogate from any right of action the Contractor may have against the Sub-Contractor in respect of any breach of duty of the Sub-Contractor under or in connection with the Sub Contract happening prior to the date of service of notice by the Beneficiary under Clause 4.3 [or 4.3A].
- 4.7 If the employment of the Sub-Contractor under the Sub Contract is suspended, discontinued, or terminated before service of any notice under Clause 4.3 [or 4.3A], then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, discontinuance, or suspension the Sub-Contractor shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Sub Contract but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Sub-Contractor an amount equal to the sum which, immediately before termination, suspension or

discontinuance of the Sub-Contractor's employment, was then owing to the Sub-Contractor under the Sub Contract.

- 4.8 Upon payment by the Beneficiary in accordance with Clause 4.3 [or 4.3A] or 4.7 of an amount equal to the relevant sum owed from the Contractor, the Sub-Contractor shall assign to the Beneficiary all the Sub-Contractor's rights against the Contractor in respect of such unpaid sum, and shall pay to the Beneficiary any of the same subsequently received by it from the Contractor.
- 4.9 The Beneficiary guarantees to the Sub-Contractor the performance of the obligations of any appointee of the Beneficiary nominated under Clause 4.3 [or 4.3A] or 4.7.
- 4.10 The Contractor agrees to the foregoing provisions of this Clause 4 and agrees to be bound by them.
- 4.11 Where the Sub-Contractor has given rights in relation to the Sub Contract similar to those contained in this clause 4 to any other person then if both the Beneficiary and any such other person serve notice under clause 4.3 [or 4.3A] or clause 4.7 or its equivalent the notice served by the Beneficiary shall [prevail][not prevail]<sup>1</sup>

## **5 ASSIGNMENT**

- 5.1 The Beneficiary may, freely assign all of its rights under this Deed:
- 5.1.1 to any mortgagee or Funder and by way of re-assignment on redemption; and
- 5.1.2 at any time to any Associated Company on giving written notice of such assignment to the Sub-Contractor. For the purpose of this Clause 5.1, "Associated Company" means in respect of the Beneficiary, a company which is a subsidiary, a holding company or a company which is a subsidiary of the holding company of the Beneficiary, where subsidiary and holding company have the meaning given to each of them in Section 1159 of the Companies Act 2006; and
- 5.1.3 by absolute assignment on two other occasions only.

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<sup>1</sup> CIC/Council's notice to prevail

- 5.2 In this Deed, references to the Beneficiary include where the context admits its permitted assignees.
- 5.3 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 5.1 or Clause 5.2 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

## **6 COPYRIGHT AND LICENCE TO USE DOCUMENTS**

- 6.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Sub-Contractor in the course of performing its obligations under the Sub Contract ("the Documents") will remain vested in the Sub-Contractor. For the purposes of this clause 6, "Intellectual Property" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 6.2 The Sub-Contractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Sub-Contractor's obligations or the termination of the Sub Contract or this Deed or the determination of the Sub-Contractor's engagement under the Sub Contract or any dispute under the Sub Contract or this Deed) to use and to reproduce all Documents for any purpose whatsoever connected with the Sub Contract Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Sub Contract Works. Such licence will carry the right to grant sub-

licences and will be transferable to third parties. Such licence shall enable the Beneficiary to copy and use the Documents for the extension of the Works.

- 6.3 The Sub-Contractor will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Sub Contract or under this Deed or as otherwise required to enable it to fulfil its obligations under the Sub Contract.
- 6.4 The Sub-Contractor will not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in clause 6.2.
- 6.5 The Sub-Contractor warrants that the Documents (save to the extent that duly authorised sub Sub-Contractors or sub consultants have been used to prepare the same) are the Sub-Contractor's own original work and that in any event their use in connection with the Sub Contract Works will not infringe the rights of any third party. The Sub-Contractor further warrants that where duly authorised sub sub-contractors are used their work will be original and that the Sub-Contractor will obtain the necessary consents in relation to clause 6.2.
- 6.6 The Sub-Contractor agrees on reasonable request at any time and following reasonable prior written notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies, in whatsoever format or formats that the Beneficiary shall require (including, inter alia, copy negatives and CAD disks), of the Documents.
- 6.7 The Sub-Contractor waives and agrees not to assert (and to procure that any sub, sub-contractors do likewise) all moral rights in the Documents under Part 1 Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modification of it.

## **7 INDEMNITY INSURANCE**

- 7.1 The Sub-Contractor warrants to the Beneficiary that it has at all relevant times maintained and that there is in force a policy of and (so long as such insurance is available in the market) will continue to maintain for a period of 12 years after the date of issue of the Certificate of Practical Completion in respect of whole of the Works professional indemnity insurance with a reputable insurance company with

a limit of indemnity not less than £2,000,000 (Two million pounds) arising out of each and every claim in any occurrence or series of occurrences to cover any claims made under the Sub Contract and this Deed or otherwise against the Sub-Contractor in relation to the Development.

7.2 As and when reasonably required by the Beneficiary the Sub-Contractor shall promptly produce for inspection satisfactory documentary evidence that the insurance referred to in Clause 7.1 is being properly maintained and confirm that payment has been made in respect of the last preceding premium due under it.

7.3 If for any periods such insurance cover is not available at commercial reasonable terms the Sub-Contractor shall notify the Beneficiary forthwith and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available.

7.4 If the Sub-Contractor is in breach of this Clause 7 or is insolvent, the Beneficiary shall be at liberty to effect such insurance cover (including, inter alia, inherent defects insurance) as it deems requisite and to recover the cost from the Sub-Contractor on demand.

## **8 OTHER RIGHTS**

8.1 This Deed shall not negate nor diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary or to the Employer.

8.2 No approval or inspection of the Works or of any designs or specifications nor any testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate nor diminish any duty or liability of the Sub-Contractor arising under this Deed.

8.3 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

## **9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Deed is not intended to confer any right on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 save as provided for under clause 5

## **10 LIMITATION PERIOD**

10.1 The Beneficiary will be entitled to commence legal proceedings against the Sub-Contractor at any time up to the expiry of the Limitation Period. For the avoidance of doubt, the parties agree that any provision of the Limitation Act 1980 to the contrary will not apply to this deed.

10.2 Save in the event of step-in under clause 4, the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.

## **11 NOTICES**

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

## **12 GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

**THIS DOCUMENT** is executed as a deed and delivered on the date stated at the beginning of this Deed.

EXECUTED as a Deed on behalf of

[CONTRACTOR]

by [ ] a director .....

in the presence of:

Witness signature: .....

Witness name: .....

Witness address: .....

.....

.....

**Witness occupation:** .....

EXECUTED as a Deed on behalf of

[SUB-CONTRACTOR]

by [ ] a director .....

in the presence of:

Witness signature: .....

Witness name: .....

Witness address: .....



.....  
.....  
**Witness occupation:** .....

EXECUTED as a Deed on behalf of

**[FUNDER][BENEFICIARY]**