

Dated: 30th September 2021

FAREHAM BOROUGH COUNCIL

and

HAMPSHIRE COUNTY COUNCIL

and

WELBORNE LAND LIMITED

and

MARK EDWARD THISTLETHWAYTE

and

C. HOARE & CO

and

WELBORNE GARDEN VILLAGE TRUST LIMITED

AGREEMENT

pursuant to Section 106 of the Town and Country
Planning Act 1990 and other Enabling Powers
relating to development of land at Welborne

PLANNING APPLICATION: P/17/0266/OA

FAREHAM
BOROUGH COUNCIL



Southampton and Fareham Legal Services Partnership

**Southampton City Council
Civic Offices
Southampton
SO14 7LY**

Ref: EP06-01-013690

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THIS DEED is made on 30th September

2021

BETWEEN:

- (1) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham PO16 7AZ (the "**Borough Council**")
- (2) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ (the "**County Council**")
- (3) **WELBORNE LAND LIMITED** (Company Registration Number 10786908) whose registered address is at 20 Jewry Street Winchester SO23 8RZ (the "**Owner**")
- (4) **MARK EDWARD THISTLETHWAYTE** of Southwick Estate Office, West Street, Southwick, Fareham, PO17 6EA ("the **Southwick Estate Representative**")
- (5) **C. HOARE & CO** (Company Registration Number 240822) of 37 Fleet Street, London EC4P 4DQ (the "**Chargee**")
- (6) **WELBORNE GARDEN VILLAGE TRUST LIMITED** (Company Registration Number 12333608) of 20 Jewry Street, Winchester, Hampshire SO23 8RZ ("**WGVTL**").

RECITALS

- (A) The Borough Council and the County Council are the local planning authorities for the purposes of the Act for the area in which the Land is situated.
- (B) The County Council is the Local Highway Authority for Hampshire (save for trunk roads and special roads) and the Transport Authority for the purposes of the Transport Act 1985 and 2000 and the Local Education Authority and the local authority for the purposes of the Care Act 2014, and the local authority for the purposes of Schedule 9.
- (C) The Owner is the freehold owner of those parts of the Land registered with title absolute at HM Land Registry under Title Numbers HP568393, HP537555, HP445118, HP553147, HP165475, HP225695, HP765602, HP192358, HP847890, HP847889, HP809096, HP131979, HP839758, HP592986, HP850698 and HP532349.
- (D) The Southwick Estate Representative enters into this Deed to give the covenants in Clause 5.3.
- (E) The Chargee is the beneficiary of a registered charge dated 22 September 2017 relating to those parts of the Land registered at HM Land Registry under Title Numbers HP568393, HP809096, HP165475, HP847890, HP847889 and HP553147, a registered charge dated 18 April 2018 relating to the part of the Land registered at HM Land Registry under Title Numbers HP765602 and HP445118.
- (F) WGVTL is entering into the agreement to give the covenants in Clause 5.2.
- (G) Buckland Development Limited has submitted the Application to the Borough Council and the parties have agreed to enter into this Deed in order to secure the planning and other obligations contained in this Deed.
- (H) The Borough Council has resolved to grant the Permission subject to the prior completion of this Deed.

- (I) The Owner has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed.
- (J) The Owner has agreed to be party to this Deed and consents to this Deed being entered into and to the obligations becoming binding on the Land.
- (K) The County Council has resolved conditionally to take on the role of Delivery Body (as defined in Schedule 13) as set out in the report to the County Council's Cabinet dated 13th July 2021.
- (L) The Borough Council has resolved at the meeting of its Executive on 9th August 2021 to enter into the Memorandum of Understanding with Homes England regarding the expenditure of the Profit on Costs in excess of the Target Profit (up to the value of the proposed HIG Funding) that shall be used towards the provision of Additional Affordable Housing Units or by way of an Affordable Housing Contribution (in each case as defined in Schedule 10).
- (M) In anticipation of the terms of the proposed HIG Funding agreement referred to within the County Council's Cabinet Report dated 13th July 2021, the Owner and the Borough Council hereby agree to the provisions of paragraph 5 of Part B of Schedule 10 such that, subject to the viability of the Developer's Project, the Profit on Costs in excess of the Target Profit up to the value of the proposed HIG Funding shall be used towards the provision of Additional Affordable Housing Units or by way of an Affordable Housing Contribution (in each case as defined in Schedule 10).

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

1.1 In addition to the definitions set out in clause 1.2 below, a series of specific definitions are included in each of the Schedules to this Deed to define further terms and expressions in order to facilitate interpretation and unless stated to the contrary the specific definitions in the Schedules shall apply throughout this Deed where the relevant terms and expressions are used.

1.2 In this Deed the following expressions shall have the meanings indicated:

"Act"	the Town and Country Planning Act 1990 (as amended);
"Affordable Housing"	affordable housing for sale or rent for those whose needs are not met by the market and in accordance with the definition of 'Affordable Housing' contained in Annex 2 of the NPPF;
"Affordable Housing Unit"	those Residential Units that are to be provided as Affordable Housing, in the form of Affordable Home Ownership Units and/or Affordable Rent Units and/or Social Rent Units in accordance with Schedule 10;
"Allotment"	an area of 2.1 hectares for use as allotments to include fencing, recycling and composting area, appropriate water supply, parking provision, a secure communal building/store and raised beds for disabled users to be constructed in accordance with a Reserved Matter Approval on the land identified in the Land Use Plan;

“Application”

the application submitted on behalf of Buckland Development Limited to the Borough Council and validated on 6 March 2017 under reference number P/17/0266/OA seeking outline planning permission for a new community of up to 6000 dwellings (C3 and C2, including a care home of use class C2) together with a district centre (comprising up to 2,800m² food store retail (A1), up to 2,419m² of non-food retail (A1) and up to 2,571m² of other non-convenience/comparison retail use (A1 - A5); a village centre (comprising up to 400m² food store retail (A1), up to 1,081m² of non-food retail (A1), a public house (up to 390m² A4 use) and up to 339m² of other non-convenience/comparison retail use (A1 - A5); up to 30,000m² of commercial and employment space (B1); up to 35,000m² of general industrial use (B2); up to 40,000m² of warehousing space (B8); a hotel (up to 1,030m² C1 use); up to 2,480m² of community uses (D1 and D2); up to 2,200m² ancillary nursery (D1), health centre (D1) and veterinary services (D1); retention of Dean Farmhouse; a secondary school and 3 Primary schools; pre-schools; green infrastructure including formal and informal open and amenity space; retention of some existing hedgerows, grassland, woodland areas, allotments, wildlife corridors; all supporting infrastructure; household waste recycling centre; requisite sub-stations; sustainable drainage systems including ponds and water courses; a remodelled M27 J10 including noise barrier(s); works to the A32 including the creation of three highway junctions and new crossing(s); distributor roads (accommodating a Bus Transit network) and connections to the surrounding cycleway and pedestrian network; car parking to support enhanced use of Dashwood; ground remodelling; any necessary demolition; with all matters reserved for future determination with the exception of the works to M27 J10 and the three highway junctions and related works to the A32;

“Application Site”

the land as shown on the plan edged red submitted as part of the Application with drawing title “Application Boundary Dec 18 Revision A.0” and appended to this Deed at Appendix 21;

“Berkeley Homes Land”

that part of the Application Site that is registered at HM Land Registry under title number HP584869 as shown coloured purple on Plan 1;

“Borough Monitoring Fee”

the sum of ten thousand pounds (£10,000) being a contribution towards the development control costs incurred by the Borough Council in connection with the monitoring of this Deed;

"Buckland Development Limited"	Buckland Development Limited (Company Registration Number 06030455) whose registered address is at 20 Jewry Street, Winchester, SO23 8RZ;
"Certificate of Maintenance"	a certificate issued by the Owner following the later of the expiry of the relevant Maintenance Period and the full rectification of any defects appearing during that Maintenance Period (including any extended period of maintenance required for the rectification works) and for the avoidance of doubt this does not apply to the Highways Works in Schedule 8;
"Charity Farm"	the area of land edged black and labelled Charity Farm on Plan 1;
"Commencement"	the carrying out of a "material operation" (as defined in section 56(4) of the Act) in connection with the Development save that for the purposes of this Deed and for no other purpose; operations consisting of site clearance, ecological mitigation, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not amount to Commencement (and "Commence" and "Commenced" shall be construed accordingly));
"Commercial Unit"	any building within the Development to be used for the carrying out of a commercial business and includes any Unit Specific Commercial Unit and Exempt Commercial Unit;
"Confirmatory Deed"	a confirmatory deed as required by Clause 20 in relation to the Third Party Land the Fareham Properties and the Berkeley Homes Land substantially in the form appended to this Deed at Appendix 7;
"Continuing Breach Notice"	a further notice issued by the County Council following the Owner's failure to comply with the requirements of the Material Breach Notice;
"Contributions"	any one or number of the financial contributions (including any Sawmills Infrastructure Contribution(s)) required to be paid by the Owner to the Borough Council or the County Council as appropriate pursuant to this Deed;
"Councils"	the Borough Council and the County Council and "Council" shall be construed accordingly as the context so requires;
"County Monitoring Fee"	the sum of ten thousand pounds (£10,000) being a contribution towards the development control costs

	incurred by the County Council in connection with the monitoring of, and approvals given under this Deed;
“Deed”	this agreement made by deed;
“Development”	the development of the Land in accordance with the Permission;
“District Centre”	the District Centre identified on the Land Use Plan and for the avoidance of doubt located in the southern half of the Application Site;
“Directors Costs”	the sum of five thousand pounds (£5,000) for the development control costs incurred by the County Council in connection with the preparation and completion of this Deed;
“Eastern Employment Area”	part of the area labelled ‘East Employment Area’ on the plan appended to this Deed at Appendix 22
“Education Contribution”	together the contributions (Index Linked) as identified in Schedule 2 of this Deed;
“Education Index”	the BCIS All-In Tender Price Index 322 of construction costs published from time to time by the Building Cost Information Service or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the County Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation;
“Education Steering Group”	has the same meaning as Schedule 2 of this Deed
“Enabling Powers”	Section 111 and 120 of the Local Government Act 1972 (as amended) Section 1 of the Localism Act 2011, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers which may be relevant for the purpose of giving validity to or facilitating the enforcement of the obligations created by this Deed;
“Estate Management Company”	WGVTL or any other replacement company approved by the Borough Council pursuant to paragraph 2.5 of Schedule 1;
“Existing Leaseholder”	a party who owns an Existing Leasehold Interest;
“Existing Leasehold Interest”	any of the following leasehold interests in the Land which are registered at HM Land Registry under Title Numbers at the date of this Deed: <ul style="list-style-type: none"> (a) HP745942 (b) HP482331

(c) HP669787

(d) HP681472

"Fareham Properties"	those parts of the Application Site that are registered at HM Land Registry under title numbers HP252366 and HP162335 and HP615668 and shown coloured brown on Plan 1 and "Fareham Property" shall be construed accordingly;
"Freehold Owner"	the owner of that part of the Land who has granted a Long Lease or who has completed a Freehold Transfer in accordance with the terms of Schedules 1, 3, 4 and 5 of this Deed and who owns the freehold reversion;
"Freehold Transfer"	a transfer of the freehold interest in all and any Public Space and/or Play Area (as both terms are defined in Schedule 4) provided within a Reserved Matter Application Area from the Owner to the Estate Management Company in accordance with the stipulations contained in paragraph 4.3 of Schedule 1;
"HIG Funding"	the sum of £42,000,000 (forty two million pounds) being the total of the funds paid under the grant agreement of £41,250,000 (forty one million two hundred and fifty thousand pounds) plus the capacity funding of £750,000 (seven hundred and fifty thousand pounds) both to be paid by Homes England towards the cost of construction of the M27 Junction 10 Improvement Works;
"Highways Contribution"	has the meaning as defined in Schedule 8;
"Household Waste Recycling Centre Contribution"	The contributions (Index Linked) as identified in Schedule 9 of this Deed;
"Index Linked"	<p>for the purposes of Schedule Two means adjusted in accordance with the Education Index by multiplying in each case the payment due by a fraction whose denominator shall be fixed at Index 322 and whose numerator shall be the last published BCIS all in tender price Index before the date on which payment is made but which for the avoidance of doubt shall not fall below the original payment figure SAVE that any payment of an instalment of the Northern Primary School Contribution, Western Primary School Contribution, First District Centre Primary School Contribution, Second District Centre Primary School Contribution District Centre Secondary School Contribution made after the Second Instalment as set out in Schedule 2 shall only be Index Linked to the date when the Index was last published before the date that the Second Instalment of such contribution is paid;</p> <p>for the purposes of any other payment or financial contribution due under this Deed and for the purposes of the Reserve Fund Account in Schedule 1 means adjusted</p>

in accordance with the Consumer Prices Index issued by the Office for National Statistics (or amendment or replacement thereof) by multiplying in each case the payment due by a fraction whose denominator shall be the last Inflationary Index monthly figure published before the date of this Deed and whose numerator shall be the last published Consumer Prices Index monthly figure available before the date on which the relevant invoice is raised pursuant to Clause 17.1 or (if applicable) the date on which payment is made but which for the avoidance of doubt shall not fall below the original payment figure;

for the purposes of the Highways Contribution in Schedule 8 and the Off Site PROW Contribution in Schedule 12 and the Household Waste Recycling Centre Contribution in Schedule 9 and the Bird Aware Contribution in Schedule 5 means adjusted in accordance with the Retail Price Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Retail Price Index monthly figure published before the date of this Deed and whose numerator shall be the last published Retail Price Index monthly figure available before the date on which the relevant invoice is raised pursuant to Clause 17.1 or (if applicable) the date on which payment is made but which for the avoidance of doubt shall not fall below the original payment figure;

AND "Index", "Indexed", "Indexation" and "Index Linking" shall be construed accordingly;

"Interest"

interest at 4 percent above the base lending rate of the Barclays Bank Plc (calculated on a daily basis from the date on which it fell due until the actual date of payment);

"Land"

the land shown edged with a red line and hatched blue on Plan 1 together with any other land within the Application Site which after the date of this Deed becomes the subject of a Confirmatory Deed and, insofar as this Deed relates to the management and maintenance of Dashwood (as defined in Schedule 5), the land shown edged with a green line on Plan 1;

"Land Use Plan"

the plan appended hereto at Appendix 19 and marked 'Land Use Plan' or an amended Land Use Parameter Plan approved by the Borough Council in accordance with Condition 2 of the Permission;

"Legal Costs"

the respective Councils' reasonable and proper legal costs in connection with the preparation and completion of this Deed;

"Long Lease"

a lease entered into between the Freehold Owner and the Estate Management Company in accordance with the stipulations contained in paragraph 4.1 of Schedule 1;

"M27 Junction 10 Improvement Works"	has the meaning as defined in Schedule 13;
"Material Breach Notice"	<p>a notice issued by the County Council to the Owner setting out:</p> <ul style="list-style-type: none"> (a) the Owner is in a material breach of one or more of the obligations of this Deed; (b) details of the breach; (c) the steps which the Owner is required to take to remedy such material breach; and (d) the period within which the material breach is to be remedied, being not less than one month from the date of the notice save in the case of emergency including but not limited to highway network safety;
"Maintenance Period"	a minimum period of 12 months (or 6 months for the purposes of each area of SANGS Land pursuant to Schedule 5) or such longer period of maintenance as may be agreed in the construction contract for the relevant item of infrastructure to be delivered in accordance with Schedule 4 or Schedule 5 during which the Owner shall procure that the contractor maintains the relevant item of infrastructure in accordance with the Estate Management Strategy (as defined in Schedule 1);
"Memorandum of Understanding"	a memorandum of understanding which shall be made between the Borough Council and Homes England to set out the broad principles and processes and obligations on the Borough Council in relation to the monitoring of the performance of various covenants on the part of the Owner contained in Schedule 10 of this Agreement and to the delivery of Residential Units as part of the Development, together with the recovery of the HIG Funding through the provision of Additional Affordable Housing Units and/or by way of an Affordable Housing Contribution (as both terms are defined in Schedule 10).
"Neighbourhood"	a Neighbourhood as approved pursuant to Condition 9 on the Permission;
"NPPF"	the National Planning Policy Framework document published July 2021 and any subsequent revision or replacement;
"Occupation"	occupation for the purposes permitted by the Permission (or the relevant purpose or purposes as the context permits) but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation

	to security operations and "Occupy" and "Occupied" shall be construed accordingly;
"Plan 1"	the plan annexed hereto at Appendix 1 with reference number WEL-PBF-NPXX-DR-Z-00002 Rev P-09 showing the Land edged red and hatched blue;
"Permission"	the planning permission subject to conditions granted or to be granted by the Borough Council pursuant to the Application;
"Perpetuity"	a period of 80 years from the date of this Deed;
"Practically Completed"	practically complete and certified as being fit for beneficial occupation or use in accordance with the applicable construction contract (and an NHBC policy or equivalent requirements current at the date of inspection in respect of any Residential Unit), subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the building and which would be reasonable to include in a snagging list and "Practical Completion" shall be construed accordingly SAVE for Schedule 2;
"Private Residential Units"	Residential Units that are not Affordable Housing Units;
"Retail Price Index"	For the purposes of the Highways Contribution in Schedule 8 and the Household Waste Recycling Centre Contribution in Schedule 9 and the Off Site PROW Contribution in Schedule 13 means the Retail Prices Index issued by the Office for National Statistics during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the County Council and/or the Borough Council (as applicable) shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation;
"Reserved Matter Application"	an application for approval of reserved matters pursuant to the Permission;
"Reserved Matter Application Area"	an area of the Land that is the subject of a Reserved Matter Application and/or Reserved Matter Approval (as applicable);
"Reserved Matter Approval"	an approval of a Reserved Matter Application;
"Residential Unit"	an individual residential dwelling forming part of the Development in accordance with the Permission and which for the avoidance of doubt includes both a Private Residential Unit and an Affordable Housing Unit;
"SANGS Land"	the SANGS Land as defined in Schedule 5;

“SANGS Management Plan”	a management plan detailing the management and maintenance of the SANGS Land substantially in accordance with chapter 6 of the SANG Management Plan dated July 2019 and submitted with the Application and which shall include provisions for the review and subsequent approval of any revisions arising from such review by the Borough Council;
Sawmills Confirmatory Deed	a deed as required by Clause 20 and condition 61 of the Permission substantially in the form appended to this Deed at Appendix 6;
“Sawmills Infrastructure Contribution”	a proportionate financial contribution towards the total cost of provision the Infrastructure payable by the owner of the Sawmills Land to the Borough Council pursuant to the Sawmills Confirmatory Deed
“Sawmills Land”	that part of the Application Site registered at HM Land Registry under title number HP583156 and HP592110 as shown coloured yellow on Plan 1;
“Statutory Undertakers”	any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of including but not limited to telephone, data or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking;
“Third Party Land”	those parts of the Application Site that are registered at HM Land Registry under title numbers HP650214, HP725810, HP725824, HP725825, HP456128 and HP456127 as shown coloured green on Plan 1;
“Trigger”	any date or event that gives rise to an obligation under this Deed on the part of the Owner to the Borough Council or the County Council as the case may be
“Welborne Facilities Plan”	the plan appended at Appendix 23 to this Deed;
“Welborne Sports Hub”	a sports hub to include a minimum area of 8.34 hectares, the Sports Building, parking, at least two Tennis Courts, the Multi Use Games Area and at least one Artificial Pitch to be constructed in accordance with a Reserved Matter Approval on the area of land coloured green on the Welborne Facilities Plan;
“Western Employment Area”	part of the area labelled ‘West Employment Area’ on the plan appended to this Deed at Appendix 22;
“Working Day(s)”	any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

2 INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule, appendix or recital in this Deed.
- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 2.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment or amendment of that Act of Parliament for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act of Parliament or deriving validity from it.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Councils the successors to their respective statutory functions.
- 2.6 References to the Southwick Estate Representative means a representative of the Southwick Estate from time to time and which at the date of this Deed is Mr Mark Edward Thistlethwayte.
- 2.7 Save as where the context provides otherwise, references to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties.
- 2.8 The headings and contents list are for reference only and shall not affect construction.
- 2.9 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.10 Obligations not to do an action or activity (or similar) under this Deed comprise obligations not to permit or suffer such action or activity (or similar) to be done.
- 2.11 References to the Councils' agreement, consent, approval or expression of satisfaction shall mean the written agreement, consent, approval or expression of satisfaction (as applicable) of the respective Council(s) pursuant to this Deed which may be given by electronic communication pursuant to clause 15 and such agreement, consent, approval or expression of satisfaction shall be in addition to and not in substitution for any other permission that may be necessary.

3 STATUTORY AUTHORITY

- 3.1 This Deed is made pursuant to Section 106 of the Act and the Enabling Powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and bind the Land and are enforceable by the Councils as local planning authority and/or local highway authority and/or local education authority and/or the care authority and/or minerals and waste planning authority (as applicable) against the Owner and any person succeeding or deriving title in the Land or any part of it from the Owner as if that person had been an original covenanting party to this Deed.

3.3 To the extent that any of the covenants restrictions and requirements contained in this Deed are not planning obligations within the meaning of the Act they are entered into by the Borough Council and the County Council under the Enabling Powers and all other powers and are contractual obligations between the named parties

3.4 The covenants, restrictions and requirements secured by paragraphs 2.2, 2.3 and 3.2.2 of Schedule 5 and (insofar as it applies to Dashwood (as defined in Schedule 5)) Schedule 1 are entered into for the purposes of securing the carrying out of works on, and regulating the use of, land outside of the Borough Council's area and in Dashwood and for the avoidance of doubt are intended to be enforceable by the Borough Council against the Owner and its successors in title (where applicable) pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982.

4 EFFECT OF THE AGREEMENT

4.1 This Deed shall take effect on the date upon which it is completed.

5 COVENANTS TO THE COUNCILS

5.1 The Owner hereby covenants with the Councils that it will observe and perform the provisions contained ~~on its part~~ in Schedules 1 to 13 (inclusive) *save where covenants expressly require compliance by another party.*

5.2 WGVTL hereby covenants with the Councils:

5.2.1 to adopt by special resolution the memorandum and articles of association approved by the Borough Council pursuant to paragraph 2.1 of Schedule 1;

5.2.2 upon request by the Owner to make an offer to appoint a member/officer to each of the following director of the board of WGVTL :

(a) The Borough Council; and

(b) The County Council

5.2.3 to jointly and severally with the Owner comply with all the obligations in this Deed expressed to be undertaken by the Estate Management Company; and

5.2.4 not to alter or amend its memorandum or articles of association (as approved pursuant to paragraph 2.1 of Schedule 1) without the Borough Council's prior written approval.

5.3 The Southwick Estate Representative hereby covenants with the Councils:

5.3.1 to notify the Councils of any change in the name of the individual being the Southwick Estate Representative;

5.3.2 to remain as a member of the board of WGVTL (or any replacement Estate Management Company) for so long as it remains a legally constituted company (unless otherwise agreed by the Borough Council); and

5.3.3 to otherwise comply with the obligations on its part in paragraphs 2.7 and 2.8 of Schedule 1.

6 THE COUNCILS' COVENANTS

6.1 The Borough Council hereby covenants with the Owner that it will observe and perform the provisions on its part set out in this Deed.

6.2 The Borough Council hereby covenants with the WGVTL and the Southwick Estate Representative that it will observe and perform the relevant provisions on its part set out in Schedule 1.

6.3 The County Council hereby covenants with the Owner that it will observe and perform the provisions on its part as set out in this Deed.

7 ENFORCEMENT

7.1 No party shall be liable for a breach of any of its obligations under this Deed (save for antecedent breaches) after it shall have parted with its interest in the Land.

7.2 This Deed shall not be enforceable by the Borough Council or County Council against:

7.2.1 the County Council in its capacity as a person deriving a freehold or leasehold interest title (as the case may be) from the Owner following a transfer to the County Council of any part of the Land pursuant to the terms of this Deed SAVE in respect of the obligations upon the County Council as set out in Schedule 2;

7.2.2 Statutory Undertakers who have an interest in or arising purely in connection with their apparatus or operational land situated within the Development; or

7.2.3 the owners or occupiers of an individual Residential Unit (save in respect of a covenant restricting the Occupation of a Residential Unit or a specified number of Residential Units) PROVIDED THAT that upon the date of exchange of contracts for the purchase of any such Residential Unit no Continuing Breach Notice has been served by the County Council pursuant to clause 7.5 in respect of the Development; or

7.2.4 the owners or occupiers of any Commercial Unit (with the exception of the obligations pursuant to Schedule 7),

7.3 The Owner permits the Borough Council and their properly authorised agents and/or employees and the County Council and their properly authorised agents and/or employees to enter onto relevant parts of the Land to which any obligation relates and is enforceable against in order to verify whether any such obligation has been observed or performed and the progress of performance of any such obligation.

7.4 Prior to taking enforcement action pursuant to this Deed in respect of the breach of any restriction imposed by this Deed upon the Occupation of any Residential Units or any specified number of Residential Units the County Council shall serve notice a Material Breach Notice upon the Owner confirming that in the reasonable opinion of the authority issuing the Material Breach Notice the Owner is in material breach of the obligations contained in this Deed.

7.5 Where the County Council has served a Material Breach Notice upon the Owner pursuant to clause 7.4 and the Owner has failed to remedy the material breach identified within the period stipulated in such notice, the County Council may serve a Continuing Breach Notice confirming that such material breach remains unremedied.

7.6 The County Council having served a Material Breach Notice shall not take any enforcement action until the period within the Material breach Notice has expired SAVE in the case of an emergency.

7.7 For the avoidance of doubt clauses 7.4 to 7.6 inclusive:

7.7.1 do not apply to the Borough Council or otherwise fetter or prejudice or affect the rights discretions powers duties and obligations of the Borough Council under this Deed;

7.7.2 do not apply to the provisions contained within Schedule 6, 7, 8;

7.7.3 shall not fetter or prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7.8 For the purposes of Section 106A(1)(a) of the Act the Borough Council shall be deemed to be the appropriate authority for the planning obligations contained in each of Schedules 1 to 13 (inclusive) and the County Council shall also be deemed to be the appropriate authority for the planning obligations contained in each of Schedules 2, 6 to 10 and 12 and Schedule 13.

8 LOCAL LAND CHARGE

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

8.2 Upon the full satisfaction of the relevant terms of this Deed the Borough Council (shall upon the written request of the Owner and with the written consent of the County Council) procure that all entries in the register of local land charges relating to it other than those obligations which are of continuing effect be removed as soon as reasonably practicable.

9 DUTY TO ACT REASONABLY

9.1 All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any agreement consent approval or expression of satisfaction is due from one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

9.2 The Borough Council covenants that where any details, scheme, strategy or a plan is submitted for its approval it shall act reasonably and shall not unreasonably withhold or delay approval.

10 NO FETTER ON DISCRETION OR WAIVER

10.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Councils under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

10.2 Nothing in this Deed shall impose any contractual or other obligations on the Councils to grant the Permission.

10.3 No waiver (whether expressed or implied) by the Councils of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Councils from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

11 COVENANT AS TO TITLE

The Owner hereby covenants with the Councils that, save for the Existing Leasehold Interests that have been disclosed to the Councils (and agreed between the parties do not need to be bound by this Deed) no person other than the parties to this Deed (or as otherwise referenced in Clause 20 below) has any freehold interest in the Land for the purposes of section 106 of the Act.

12 SEVERABILITY

It is agreed that if any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

13 THE COUNCILS' COSTS

- 13.1 The Owner hereby covenants with the Councils that it will on or before the date of this Deed pay the Councils' Legal Costs
- 13.2 The Owner hereby covenants with the County Council that it will on or before the date of this Deed pay the Directors Costs to the County Council.
- 13.3 The Owner hereby covenants with the Borough Council that it will on or before the date of this Deed pay the Borough Monitoring Fee to the Borough Council.
- 13.4 The Owner hereby covenants with the County Council that it will on or before the date of this Deed pay the County Monitoring Fee to the County Council.
- 13.5 The Owner hereby covenants with the Borough Council and the County Council that it will pay the reasonable and properly incurred costs incurred by the Borough Council and/or the County Council in considering the approval of any details, scheme, strategy or a plan required to be approved by the Borough Council and/or the County Council pursuant to this Deed and in the making and confirmation of any Orders (as defined in Schedule 12).

14 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Council(s) (in accordance with clause 7.8) without the consent of any such third party.

15 NOTICES

- 15.1 Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post or by email in the following manner:
 - 15.1.1 on the Borough Council at the address shown above or by email to devcontrol@fareham.gov.uk marked "for the attention of the Head of Development Management" and bearing the reference "Welborne".
 - 15.1.2 on the County Council at the address shown above or by email to hls@hants.gov.uk marked "for the attention of the Head of Legal Services" and bearing the reference "Welborne/117103".
 - 15.1.3 on the Owner at the address as detailed above or as notified by the Owner in writing to the Councils.
 - 15.1.4 on the Southwick Estate Representative at the address as detailed above or as notified by the Southwick Estate Representative in writing to the Councils
 - 15.1.5 on WGVTL at the address as detailed above or as notified by WGVTL in writing to the Councils

16 INDEX LINKING

- 16.1 Each and every one of the Contributions which are to be paid under the terms of this Deed shall be Index Linked with the exception of the M27 Junction 10 Improvement Works Contribution and the Cost Over-Run Contribution payable in accordance with Schedule 13 of this Deed.

17 PAYMENT OF THE CONTRIBUTIONS

- 17.1 Whenever a Contribution falls due the Owner will request an invoice in relation to payment of any Contribution pursuant to this Deed and the County Council or the Borough Council (whichever is relevant) shall provide the Owner with an invoice (following the Owner's request) such invoice showing the total amount required including the relevant Contribution and the applied Indexation.
- 17.2 The Owner shall pay the Contributions to the Borough Council and the County Council in accordance with the invoice submitted by BACS or telegraphic transfer.
- 17.3 All payments must state the Application's reference number.
- 17.4 In the event the Owner does not request an invoice pursuant to clause 17.1 the Owner shall promptly pay the relevant Contribution when it falls due.

18 INTEREST ON LATE PAYMENTS

- 18.1 Any amount due from the Owner, under this Deed which is not paid on the relevant Trigger as set out in this Deed shall be payable with Interest.

19 MORTGAGEE

- 19.1 The Chargee hereby acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Owner's interests in the Land shall be bound by the obligations contained in this Deed and that the security of its registered charge over the Owner's interests in the Land shall take effect subject to this Deed PROVIDED THAT the Chargee shall otherwise have no liability under the terms of this Deed unless it takes possession of part 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.
- 19.2 Notwithstanding clause 3.2, no obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Land (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Land or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party AND if a chargee or mortgagee (or any person appointed by them) exercises its right to enforce its charge or mortgage and its power of sale, then any receiver subsequently appointed for such purposes shall not be treated as taking or entering into possession of the Land for the purposes of this clause solely by reason of exercising that power of sale PROVIDED the receiver in exercising that power of sale does not exercise any of its other rights, duties or obligations under the charge consistent with possession of the Land which for the avoidance of doubt includes but is not limited to any Development or Occupation of the Land.

20 INTERESTS NOT BOUND AT THE DATE OF THIS DEED

- 20.1 The Owner covenants:

- 20.1.1 to secure vacant possession upon reasonable notice from the Borough Council and/or the County Council (whichever is relevant) from any Existing Leaseholder where such Existing Leasehold Interest is in relation to part of the Land which is required for the delivery of infrastructure as part of the Development prior to Development being commenced within such area of the Land;
- 20.1.2 to notify the Borough Council and the County Council within 10 Working Days of the expiry surrender or termination of an Existing Leasehold Interest;
- 20.1.3 if the area within the Land known as Charity Farm is required for the delivery of infrastructure (including but not limited to the District Centre Secondary School Reserve Land) as part of the Development then prior to Development being Commenced within such area of the Land the Owner shall upon reasonable notice from the Borough Council and/or the County Council (whichever is relevant) secure vacant possession from any existing lease or license holder and the Owner shall not Commence Development of any infrastructure on the area of Land known as Charity Farm without first having provided evidence to the Borough Council and the County Council that it has obtained vacant possession of the area of the Land required for the infrastructure;
- 20.1.4 not to Commence Development or within 6 months of the date of this Deed, whichever is the earlier occurrence in relation to any unregistered parcel of land within the Land required for the M27 Junction 10 Improvement Works unless and until it has secured an appropriate level of defective title indemnity insurance (for the benefit of the County Council);
- 20.1.5 not to Commence Development within an unregistered parcel of land within the Land required for any highway works unless and until it has secured an appropriate level of defective title indemnity insurance (for the benefit of the County Council)
- 20.1.6 to keep the Borough Council and/or the County Council indemnified against all liabilities, expenses, proper costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, damages and losses suffered or incurred by the Borough Council and/or the County Council arising out of or in connection with failure to obtain vacant possession of an Existing Leasehold pursuant to clause 20.1.1 or failure to obtain vacant possession of Charity Farm if required pursuant to clause 20.1.3 and/or failure to secure the defective title indemnity insurance pursuant to clause 20.1.4 and 20.1.5 if required.
- 20.2 The Owner covenants with the Borough Council and the County Council that it shall not Commence Development nor carry out any works pursuant to the Permission on the Third Party Land unless and until it has entered into a Confirmatory Deed in respect of the Third Party Land.
- 20.3 The Owner covenants with the Borough Council and the County Council that it shall not Commence Development nor carry out any works pursuant to the Permission on the Berkeley Homes Land unless and until it has entered into a Confirmatory Deed in respect of the Berkeley Homes Land.
- 20.4 The Owner covenants with the Borough Council and the County Council that it shall not Commence Development nor carry out any works pursuant to the Permission on any one of the Fareham Properties unless and until it has entered into a Confirmatory Deed in respect of the relevant Fareham Property.
- 20.5 The Owner covenants with the Borough Council and the County Council that it shall not Commence Development nor carry out any works pursuant to the Permission on the Sawmills

Land unless and until the owner of the Sawmills Land has entered into a Sawmills Confirmatory Deed unless otherwise agreed in writing with the Borough Council and the County Council.

20.6 The Borough Council covenants with the Owner that if it receives any part of the Sawmills Infrastructure Contribution pursuant to a Sawmills Confirmatory Deed it shall:

20.6.1 (in the event that a payment of the Sawmills Infrastructure Contribution (or part thereof) is received from any party other than the Owner) notify the Owner (i.e. the Owner pursuant to this Deed and not the Sawmills Confirmatory Deed) of receipt of the payment within 30 days of such receipt;

20.6.2 hold such payment in an interest bearing account; and

20.6.3 within 20 Working Days of a request from the Owner (such request providing reasonable evidence that the Owner has paid an Infrastructure Contribution or has incurred costs in the delivery of Infrastructure) pay to the Owner a proportionate amount of the Sawmills Infrastructure Contribution received to date pursuant to the Sawmills Confirmatory Deed to the Owner.

20.7 The Borough Council and the Owner agree that:

20.7.1 any Affordable Housing Units delivered or secured to be delivered on the Sawmills Land pursuant to a Reserved Matter Approval and the Sawmills Confirmatory Deed shall be taken into account in the context of any relevant approvals or agreements under Schedule 10 of this Deed; and

20.7.2 in the event that it is agreed between the owner of the Sawmills Land and the Borough Council following the viability assessment in respect of the Reserved Matter Approval for the Sawmills Land pursuant to the Sawmills Confirmatory Deed that less than 30% of the Residential Units comprised in the same Reserved Matter Approval shall be provided as Affordable Housing Units, then not more than the Policy Target less the number of Residential Units on the Sawmills Land shall be required to be delivered as Affordable Housing Units on that part of the Land (excluding the Sawmills Land), unless the owner or developer of the Sawmills Land is the Owner as defined in this Deed.

21 NOTIFICATION OF SUCCESSORS IN TITLE

The Owner covenants with the Councils that it will give immediate written notice to the Councils of any change of ownership of the Land or any part thereof, excluding transfers of Residential Units, and further if at such time the obligations contained within this Deed have not fully been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or Commercial Unit of occupation purchased or leased by reference to an annotated plan.

22 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

23 DISPUTE RESOLUTION

23.1 Where an agreement, consent, approval or expression of satisfaction is required from one party to another under the terms of this Deed and such agreement, consent, approval or expression of satisfaction has been refused or given conditionally in accordance with the provisions of this Deed or the parties have been unable to agree (or no response has been received in

accordance with a timescale specified in the Deed or if no timescale is specified following the elapse of a reasonable time period for response) and a party wishes to dispute such refusal or conditions or resolve a matter, then that party may notify the relevant other party(ies) to which the approval relates that the matter is in dispute and:

23.1.1 the parties to the dispute shall first attempt to resolve that dispute or difference amicably including holding a meeting attended by at least one senior representative from each party within 10 Working Days of receipt of notice that a matter is in dispute;

23.1.2 if after a further 5 Working Days the parties are unable to resolve the dispute amicably pursuant to clause 23.1.1, one party may serve notice on the other party or parties (as the case may be) to the dispute of their intention to refer the dispute in accordance with clause 23.2 specifying in such notice:

- (a) the nature, basis and brief description of the dispute; and
- (b) the clause or paragraph of this Deed pursuant to which the dispute has arisen; and
- (c) a written request to concur as to the appropriateness of the professional qualifications of the person (or body) they propose to be appointed pursuant to clause 23.2.

23.2 Any such dispute or difference notified pursuant to clause 23.1.2 shall be referred to an independent and suitable person holding appropriate professional qualifications, (which for the avoidance of doubt in the case of any dispute relating to the transfer of any of the School Sites (as defined in Schedule 2) shall be a member of the Royal Institute of Chartered Surveyors and for any matter relating to viability shall be a member of the Royal Institute of Chartered Surveyors supported by appropriately qualified banking and finance experts as required) in light of the subject matter in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

23.3 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 23.2 or as to the appropriateness of the professional body then within 10 Working Days after any party has given the other parties to the dispute or difference a written request to concur as to the appropriateness of the professional qualifications of the person (or body) to be appointed pursuant to clause 23.2 then such question may be referred by any party to the president for the time being of the Law Society to appoint a solicitor to determine the appropriate professional body or person to resolve the dispute such solicitor acting as an expert and their decision shall be final and binding on all parties in the absence of manifest error and their costs shall be payable by the parties to the dispute in such proportion as they shall determine and failing such determination shall be borne by the parties in equal shares.

23.4 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days after the conclusion of any hearing that takes place or 20 Working Days after they have received any final written representation pursuant to clause 23.5.

23.5 The expert shall be required to give notice to any of the said parties requiring them to submit to them within 10 Working Days of notification of their appointment written submissions and supporting material and the other parties will be entitled to make a counter written submission within a further 10 Working Days.

- 23.6 Nothing in this clause 23 shall be taken to fetter the ability of the Councils to carry out their respective statutory functions as local planning authority and/or local highway authority and/or local education authority and/or care authority and/or minerals and waste planning authority for Hampshire with power to enforce any breach of the obligations entered into by the Owner in this Deed or any other planning breach in respect of the Development.

24 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

25 DELIVERY

This Deed is entered into as a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until such time as it is dated.

26 SPEND IN ADVANCE

If prior to the receipt of any of any Contributions including for the avoidance of doubt the M27 Junction 10 Improvement Works Contribution and the Cost Over Run Contribution (both pursuant to Schedule 13 of this Deed) payable pursuant to the terms of this Deed the Borough Council or County Council incur any expenditure in providing additional facilities to which it was intended to apply any such Contribution (or in consequence of arranging for the provision thereof) by the letting of a contract or otherwise including any design costs whether in anticipation of or as a result of the Development then the Borough Council or the County Council may immediately following receipt of such Contribution deduct there from a sum equivalent to such expenditure incurred and for the avoidance of doubt it is hereby further agreed that such proportion of any such Contribution shall not be the subject of any requirement to repay or account for it or any interest accrued thereon pursuant to the terms of this deed and that such monies shall be and remain the property of the Borough Council or County Council

27 COMMENCEMENT NOTICE

- 27.1 The Owner covenants with the County Council and the Borough Council not to Commence the Development until a written notice has been served by the Owner upon the County Council and the Borough Council confirming the date on which Commencement is proposed.
- 27.2 The Owner covenants with the County Council and the Borough Council to provide a written notice upon the County Council and the Borough Council within 20 Working Days of the first Occupation of the 1st Residential Unit and to provide further written notices within 20 Working Days of the first Occupation of Residential Units at intervals of two hundred and fifty (250) Residential Units thereafter until the first Occupation of the 6,000th Residential Unit PROVIDED THAT the Owner shall provide an additional written notice within 20 Working Days of the first Occupation of the 1,160th Residential Unit.

28 DEVELOPMENT-WIDE LIABILITY

Where this Deed expresses restriction on the Development prior to which a specified obligation must be performed and that threshold is expressed in terms of numbers or percentages of Residential Units and/or Commercial Units (as the case may be) Commenced or Occupied across or comprised within the Development or Practically Completed then such threshold shall be deemed breached if the aggregate number or percentage of Residential Units and/or Commercial Units (as the case may be) across the Development as a whole have been Commenced or Occupied or Practically Completed (as applicable).

29 LAND COMPENSATION CLAIMS

- 29.1 The Owner shall indemnify and keep indemnified the County Council against all reasonable and proper liabilities actions charges costs claims demands and expenses (including but not limited to surveyor and legal fees incurred in processing negotiating resisting and/or settling any claims and statutory interest) arising under Parts I and II of the Land Compensation Act 1973 (as amended) and s10 Compulsory Purchase 1965 and regulations made thereunder or any statutory modification or re-enactment thereof for the time being in force (including for the avoidance of doubt claims the County Council determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975) arising from or incidental to the construction adoption use or lighting of the M27 Improvement Junction 10 Works and the County Council shall notify the Owner upon receipt of any such claim and will keep the Owner fully informed of progress and shall not settle any claim until the Owner has been notified of the quantum and the County Council's decision shall be final.

SCHEDULE 1

Estate Management

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“Additional Amount”	the positive sum representing the difference between i) the Reserve Fund to which the Inflationary Index shall be applied for the period between the date of this Deed and the date on which the applicable Practical Completion occurs and ii) the Reserve Fund to which the Inflationary Index shall be applied for the period between the date of this Deed and the date on which the previous Practical Completion occurred (save in respect for the first calculation required under paragraph 5.2 of this Schedule 1 in which case the sum shall be calculated by reference to the difference between i) the Reserve Fund to which the Inflationary Index shall be applied for the period between the date of this Deed and the date on which the applicable Practical Completion occurs and ii) the Reserve Fund itself;
“Association of Residential Managing Agents”	the Association of Residential Managing Agents or such successor body being the leading trade association for residential leasehold management in England;
“Construction Period”	the period between i) the Commencement of Development of the first Residential Unit and ii) the date being 3 years following the final Reserved Matter Approval (as agreed between the Owner and the Borough Council) pursuant to the Permission;
“Default Notice”	a notice issued by the Borough Council specifying a breach of the Estate Management Strategy and requiring such breach to be remedied by the Estate Management or the Freehold Owner (as the case may be) in a specified and reasonable period of time having regard to the nature of the breach;
“Development Worker”	a person appointed pursuant to paragraph 10 of this Schedule 1 and employed on a full-time basis by the Estate Management Company to encourage residents' participation in the management and maintenance of the Welborne Estate and to perform such duties in connection with the Welborne Estate as are agreed pursuant to the Development Worker Remit;
“Development Worker Remit”	a document containing details (including but not limited to the development worker job description, duties, budget, salary and anticipated other costings) of the Development

	<p>Worker's employment, together with the mechanism by which the Development Worker is to be funded following the expiry of the initial 10 year period described in paragraph 10.1.3 of this Schedule 1, to be approved by the Borough Council pursuant to paragraph 10 of this Schedule 1;</p>
“Development Worker Job Description”	<p>a job description for the Development Worker in a form similar to the version appended to this Deed at Appendix 2;</p>
“Estate Management Charge”	<p>a charge that shall be collected by the Estate Management Company (or such other body who may be responsible for compliance with the Estate Management Strategy) for the purposes of carrying out the actions in the Estate Management Strategy and which shall be collected from –</p> <ul style="list-style-type: none"> • The owners of the Residential Units; • Registered Providers of the Affordable Housing Units; and • The operators of any Extra Care Units (as defined in Schedule 10 Error! Reference source not found.) or care homes;
“Estate Management Charge Subsidy”	<p>an amount to be calculated annually by the Estate Management Company during the Construction Period (on or prior to a date to be agreed within the Estate Management Strategy) representing the difference (if any) between (i) the estimated amount required by the Estate Management Company in order to implement, carry out and otherwise comply with its obligations under the Estate Management Strategy during the applicable annual period and (ii) the estimated amount of Estate Management Charge to be collected by the Estate Management Company during the same annual period;</p>
“Estate Management Strategy”	<p>a strategy for the management and maintenance of the Welborne Estate (which shall include for the purposes of this Schedule 1 the SANGS Management Plan in respect of the SANGS Land and shall include any unadopted roads across the Development (which shall be maintained as part of the Welborne Estate over which the public shall have rights of access in Perpetuity and for which paragraph 4 Schedule 8 to this Deed apply) such strategy to include details as to how the management and maintenance of the Welborne Estate will be financed (together with details of the mechanisms by which the Estate Management Charge and the Estate Management Charge Subsidy are to be calculated) and carried out throughout the lifetime of the Development and how such relevant parts of the Welborne Estate will be operated and managed by the Estate Management Company during the Maintenance Period and</p>

	up to the grant of a Long Lease or completion of a Freehold Transfer to the Estate Management Company;
"Leasehold Owner"	an owner of any part of the Land who has been granted a Long Lease by the Freehold Owner in accordance with the terms of this Deed (and which for the avoidance of doubt shall be the Estate Management Company);
"Long Lease"	a lease entered into between the Freehold Owner and the Estate Management Company in accordance with the stipulations contained in this Schedule 1;
"Reserve Fund"	the sum of £200,000 (two hundred thousand pounds) (Index Linked);
"Reserve Fund Account"	an interest bearing account or an investment fund set up by the Owner pursuant to paragraph 5 of this Schedule 1;
"Reserve Fund Account Charge"	a charge over the Reserve Fund Account in favour of the Borough Council in a form to be agreed between the parties acting reasonably but which for the avoidance of doubt shall include the requirements of paragraph 5.1.3 of this Schedule 1;
"RICS Service Charge Residential Management Code"	the service charge code published by the Royal Institution of Chartered Surveyors for residential management;
"Title Restriction"	a requirement included in the transfer deed of the freehold or leasehold interest relating to that Residential Unit: <ul style="list-style-type: none"> (a) that the transferee or grantee (as the case may be) shall pay the Estate Management Charge to the Estate Management Company (or such other body who may be responsible for compliance with the Estate Management Strategy); (b) that the transferee or grantee shall be prohibited from transferring its interest until all sums due under the Estate Management Charge have been paid to the Estate Management Company (or such other body who may be responsible for compliance with the Estate Management Strategy); and (c) to enter a restriction on the title of that Residential Unit requiring that on any subsequent transfer of that Residential Unit a deed of covenant is given to the Estate Management Company by the new owner of that Residential Unit to pay the sums due under the Estate Management Charge and that the new owner shall be prohibited from transferring its interest until all sums due under the Estate Management Charge have been paid and requiring

the restriction to be retained on the title of the Residential Unit;

“Welborne Estate” those parts of the Development for which a Long Lease has been granted or a Freehold Transfer has been completed (or is intended to be granted or completed under the provisions of this Deed) to the Estate Management Company in accordance with the terms of this Deed or such other parts of the Land in the ownership of the Estate Management Company.

2 ESTATE MANAGEMENT COMPANY CONSTITUTION

The Owner covenants:

- 2.1 Not to Commence Development (other than in respect of the M27 Junction 10 Improvement Works) until the memorandum and articles of association of WGVTL (substantially in the form of those appended at Appendix 3) have been submitted to the Borough Council for its written approval.
- 2.2 Not to Occupy any Residential Unit until:
 - (a) the details submitted pursuant to paragraph 2.1 above have been approved by the Borough Council;
 - (b) WGVTL has adopted by special resolution the memorandum and articles of association in accordance with those approved details;
 - (c) WGVTL has made an offer to each of the following key stakeholders to appoint a member/officer of its organisation to be a director of the board:
 - (i) The Borough Council; and
 - (ii) The County Council.
- 2.3 In the event that the Estate Management Company becomes insolvent or otherwise ceases to operate then the Freehold Owner shall:
 - 2.3.1 submit details of a proposed replacement Estate Management Company and provide the Borough Council with draft memorandum and articles of association (substantially in the form of those appended at Appendix 3) for the Borough Council to approve; and
 - 2.3.2 as soon as reasonably practicable following of the Borough Council approving the replacement Estate Management Company to take such steps as are reasonably necessary to:
 - (a) constitute the replacement Estate Management Company; and
 - (b) adopt by special resolution the memorandum and articles of association of the replacement Estate Management Company as first approved by the Borough Council; and

- (c) ensure that any existing Long Leases to the Estate Management Company are terminated and re-granted or assigned in favour of the approved replacement Estate Management Company;
- (d) take such steps as are reasonably necessary to ensure the freehold interests transferred pursuant to paragraph 9 of Schedule 4 is transferred to the replacement Estate Management Company in accordance with paragraph 4.3 below.

2.4 The Freehold Owner shall be entitled to recover any reasonable costs properly incurred by the Owner in compliance with paragraph 2.3 from the body constituted to replace the Estate Management Company pursuant to paragraph 2.3.

2.5 If the Estate Management Company collects the estate management charge itself it shall:

- 2.5.1 be accredited by the Association of Residential Managing Agents; and
- 2.5.2 operate in accordance with RICS Service Charge Residential Management Code, and

if the Estate Management Company appoints a managing agent in respect of any part of the Welborne Estate then the Estate Management Company shall procure that the managing agent shall also comply with paragraphs 2.5.1 and 2.5.2 above.

2.6 The Estate Management Company shall notify the Borough Council of the appointment of the managing agent as soon as reasonably practicably following the date of such appointment.

2.7 Following the expiry of the Construction Period in the event the Freehold Owner and/or the Southwick Estate Representative considers that a decision(s) of the Estate Management Company may adversely affect the ability of the Estate Management Company to comply with the Estate Management Strategy and/or will create a position where the finances of the Estate Management Company are such that it will not be able to comply with the Estate Management Strategy then:

- 2.7.1 One of either the Freehold Owner or the Southwick Estate Representative may serve notice upon the Borough Council and the Estate Management Company requesting that (notwithstanding paragraph 2.7) it be permitted to take control of the board of the Estate Management Company for so long as is reasonably necessary to rectify the position.
- 2.7.2 The Borough Council shall use reasonable endeavours to respond to any notice given under paragraph 2.7.1 above within 28 days.
- 2.7.3 The Freehold Owner or the Southwick Estate Representative (as applicable) shall not take any steps to take control of the board of the Estate Management Company unless and until the Borough Council has approved a request to do so (save as in the case of an emergency) or if the decision to take control has been determined by the Expert pursuant to clause 23 of this Deed.

2.8 Following the expiry of the Construction Period in the event the Borough Council considers there is a risk that the Estate Management Company may breach or has breached its obligations in the Estate Management Strategy due to the mismanagement of the Estate Management Company it may serve written notice on the Freehold Owner and/or the Southwick Estate Representative requiring one of those parties to take control of the Estate Management Company to rectify the mismanagement of the Estate Management Company.

- 2.9 In the event that the Freehold Owner takes control under paragraph 2.7 or 2.8 or takes action to comply with a Default Notice pursuant to paragraph 7.1 below, it shall be entitled to recover its reasonable costs properly incurred from the Estate Management Company.
- 2.10 The Southwick Estate Representative shall be entitled to recover its reasonable costs properly incurred in complying with its obligations under this Schedule 1 from the Estate Management Company or any replacement body approved under paragraph 2.3.1 of this Schedule 1.

3 ESTATE MANAGEMENT CHARGE

3.1 The Owner shall:

- 3.1.1 not Occupy any Residential Unit unless the form of Title Restriction for the Residential Unit or Commercial Unit (if the Owner acting in its sole discretion decides to apply the covenant to the Commercial Unit) (as the case may be) has been submitted to and approved in writing by the Borough Council.
- 3.1.2 procure that any transfer of the freehold of (or grant a leasehold interest in) a Residential Unit contains a Title Restriction in the form approved by the Borough Council.
- 3.1.3 not Occupy an individual Residential Unit unless and until the requirements detailed in paragraphs 3.1.1 and 3.1.2 have been fulfilled in respect of the same Residential Unit or Commercial Unit.

3.2 The Owner shall procure that the Estate Management Charge is maintained at a level that enables the Estate Management Company to manage and maintain the Welborne Estate in accordance with the Estate Management Strategy (having regard to the Estate Management Charge Subsidy during the Construction Period)

3.3 The Freehold Owner during the Construction Period shall be responsible for payment of the Estate Management Charge Subsidy to the Estate Management Company.

4 LONG LEASE AND FREEHOLD TRANSFERS

4.1 Where the Freehold Owner is required to enter into a Long Lease to the Estate Management Company pursuant to an obligation in this Deed, the lease shall include the following provisions:

- 4.1.1 the term shall be not less than 999 (nine hundred and ninety-nine) years;
- 4.1.2 the price paid shall be £1;
- 4.1.3 the rent payable shall be a peppercorn;
- 4.1.4 a covenant(s) by the Estate Management Company to comply with the Estate Management Strategy in accordance with paragraph 6.1.2 of this Schedule 1 and to comply with any Default Notice served in accordance with paragraph 7 of this Schedule 1;
- 4.1.5 provisions allowing the termination of the lease in the event that the Estate Management Company becomes insolvent or otherwise ceases to operate;
- 4.1.6 a reservation allowing the Freehold Owner to enter the property to comply with the Estate Management Strategy in the event the Estate Management Company fails to comply with a Default Notice;

4.1.7 a restriction preventing a disposal of the Long Lease without the prior written consent of the Borough Council;

4.1.8 (in order to ensure compliance with both the covenant(s) at 4.1.4 above and the restriction at 4.1.7 above) a covenant by the Estate Management Company to apply to HM Land Registry upon completion of the Long Lease to register the following restriction:

"No disposal of the Leasehold interest by the proprietor of the registered estate is to be registered without a written consent signed by Fareham Borough Council (in its capacity as local planning authority) or its conveyancer".

4.2 (In order to ensure compliance with paragraphs 6.1.2 and 7 of this Schedule 1) upon the grant of any Long Lease the Owner shall apply to HM Land Registry to register the following restriction on the Owner's relevant freehold title in respect of the land over which that Long Lease has been granted:

"No disposal of that part of the registered estate shaded [] on the title plan (other than a charge) by the proprietor of the registered estate is to be registered without a written consent signed by Fareham Borough Council (in its capacity as local planning authority) or its conveyancer".

4.3 Where the Owner is required to complete a Freehold transfer pursuant to an obligation in paragraphs 8.6 and 9.4.1 of Schedule 4 the transfer shall include the following provisions:

4.3.1 the price paid shall be £1;

4.3.2 a covenant(s) by the Estate Management Company to comply with the Estate Management Strategy in accordance with paragraph 6.1.2 of this Schedule 1 and to comply with any Default Notice served in accordance with paragraph 7 of this Schedule 1;

4.3.3 a restrictive covenant preventing a disposal of the Long Lease without the prior written consent of the Borough Council; and

4.3.4 (in order to ensure compliance with both the covenant(s) at 4.3.2 above and the restriction at 4.3.3 above) a covenant by the Estate Management Company to apply to HM Land Registry to register the following restriction;

"No disposal 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 written consent signed by Fareham Borough Council (in its capacity as local planning authority) or its conveyancer".

4.3.5 an easement allowing the Freehold Owner to enter the property to comply with the Estate Management Strategy in the event the Estate Management Company fails to comply with a Default Notice.

5 RESERVE FUND ACCOUNT

5.1 The Owner shall not Occupy any Residential Unit unless:

5.1.1 the Reserve Fund Account has been set up by the Owner (or such other party as may be agreed by the Borough Council in writing) and full details of the account has been provided to the Borough Council;

- 5.1.2 the Reserve Fund has been deposited by the Owner (or such other party as may be agreed by the Borough Council in writing) in the Reserve Fund Account; and
 - 5.1.3 the Reserve Fund Account Charge has been entered into by the Owner (or such other party as may be agreed by the Borough Council in writing) and evidence has been provided to the Borough Council that notice of the Reserve Fund Account Charge (such notice to contain an acknowledgement that the benefit of the sums contained within the Reserve Fund Account shall only be assigned to the Borough Council following the failure to comply with a Default Notice in accordance with paragraph 7 of this Schedule 1 and only to the extent necessary to remedy the breach described in the Default Notice) has been acknowledged by the bank at which the Reserve Fund Account has been set up.
- 5.2 Any Reserve Fund Account Charge set up pursuant to paragraph 5.1.1 shall include (but shall not be limited to) provisions:
- 5.2.1 allowing the Borough Council immediate access to the Reserve Fund Account to withdraw funds in order to recover any costs incurred by the Borough Council in accordance with paragraph 7.4 of this Schedule 1; and
 - 5.2.2 (if the Reserve Fund Account is set up as an investment fund) giving regular and periodic statements of the balance of the Reserve Fund Account to the Borough Council.
- 5.3 In the event that the Reserve Fund Account is set up as an investment fund and at any time the value of the Reserve Fund falls below 80% of its equivalent value (had the Reserve Fund Account been set up as an interest bearing account only) then the Owner shall within 20 Working Days top up the Reserve Fund to such equivalent value.
- 5.4 If the sum of money in the Reserve Fund Account is reduced as a result of the carrying out of any works by the Borough Council pursuant to a Default Notice, the Freehold Owner and/or the Estate Management Company shall procure within 3 months the replenishment of the Reserve Fund Account with the sum of money used by the Borough Council pursuant to paragraph 7 below to carry out any works specified in the Default Notice.
- 5.5 Following the Practical Completion of each of 1,000 Residential Units, 2,000 Residential Units, 3,000 Residential Units, 4,000 Residential Units, 5,000 Residential Units and 5,750 Residential Units the Owner shall deposit the Additional Amount in the Reserve Fund Account and the Owner shall not Occupy 1,001 Residential Units, 2,001 Residential Units, 3,001 Residential Units, 4,001 Residential Units, 5,001 Residential Units or 5,751 Residential Units respectively unless the Owner has deposited the same sum in the Reserve Fund Account.

6 ESTATE MANAGEMENT STRATEGY

- 6.1 The Owner and WVGTL shall:
- 6.1.1 submit an Estate Management Strategy to the Borough Council for its written approval no later than 3 months after Commencement of Development (excluding the M27 Junction 10 Improvement Works) and in any event not to Occupy any Residential Unit until the Estate Management Strategy has been approved by the Borough Council.
 - 6.1.2 at all times comply with the approved Estate Management Strategy.

7 DEFAULT

- 7.1 During the Construction Period if there is a breach of any of the obligations in this Schedule 1 the Borough Council may serve a Default Notice on the Freehold Owner and the Estate Management Company and the Freehold Owner and Estate Management Company shall comply with the Default Notice.
- 7.2 Following the Construction Period if there is a breach of any of the obligations under the Estate Management Strategy, then the Borough Council may serve a Default Notice on the Estate Management Company and the Estate Management Company shall comply with the Default Notice.
- 7.3 In the event that the Estate Management Company fails to comply with a Default Notice issued pursuant to paragraph 7.2 above then the Borough Council may serve a Default Notice on the Freehold Owner and the Freehold Owner shall comply with the Default Notice.
- 7.4 In the event that both the Freehold Owner and the Estate Management Company fail to comply with a Default Notice issued pursuant to paragraph 7.1 above, or in the event that the Freehold Owner fails to comply with a Default Notice issued pursuant to paragraph 7.3 above, then the Borough Council may (following service of notice on the Estate Management Company and Freehold Owner confirming the actions the Borough Council intends to take) take such steps to remedy the breach of the obligations in the Estate Management Strategy and which may include:
- 7.4.1 undertaking all such things as are reasonable and necessary to remedy the breach as set out in such a Default Notice;
 - 7.4.2 entering onto such parts of the Land as may be necessary to remedy the breach as set out in such Default Notice; and
 - 7.4.3 immediate access to the Reserve Fund Account and/or recovery from the Owner or the Estate Management Company to cover its reasonable and proper expenses in carrying out such works as are necessary to remedy the breach as specified in the Default Notice.

8 ORDER OF ENFORCEMENT

- 8.1 The Borough Council agrees that following expiry of the Construction Period where a Long Lease has been granted or a Freehold Transfer completed by the Freehold Owner in accordance with the terms of this Deed the Borough Council shall not seek to enforce a breach of any obligation pursuant to this Schedule One relating to that part of the Land where a Long Lease has been granted or a Freehold Transfer completed against the Freehold Owner unless the Borough Council has first served a Default Notice on the Estate Management Company and the breach identified has not been remedied in accordance with the terms of the same notice.

9 STATUTORY POWERS

- 9.1 Nothing in this Schedule 1 shall prevent the Borough Council from carrying out such steps pursuant to its statutory powers whether under Sections 106(5) or (6) of the Act or otherwise.

10 DEVELOPMENT WORKER

- 10.1 The Owner shall

- 10.1.1 not Occupy any Residential Units unless the Development Worker Remit has been submitted to and approved by the Borough Council.
- 10.1.2 not Occupy any Residential Units unless:
 - (a) a Development Worker has commenced employment for and on behalf of the Estate Management Company; and
 - (b) the Owner has paid a minimum of 2 years annual salary for the Development Worker (as agreed pursuant to an approved Development Worker Remit) to the Estate Management Company;
- 10.1.3 make a payment of a sum equivalent to the annual salary to the Estate Management Company on the annual anniversary of the payment made pursuant to paragraph 10.1.2 (b) above until a sum equivalent to 10 years' salary for the Development Worker (as agreed pursuant to an approved Development Worker Remit) has been paid to the Estate Management Company.
- 10.1.4 employ (or procure the employment by WGVTL of) a Development Worker until the Practical Completion of the final Residential Unit.

SCHEDULE 2

Education

11 DEFINITIONS

11.1 In this Schedule the following terms have the following meanings:

“1FE”	a one form entry primary school expansion;
“2FE”	a two form entry primary school;
“Abnormal Feature Contribution”	the abnormal costs agreed to be paid by the Owner to the County Council towards the costs to be incurred by the County Council in clearing and/or levelling and/or any remediation for abnormal conditions on the School Sites - which would prevent or restrict the development and use of the School Sites for their intended purpose;
“Acceptance Notice”	a notice in writing from the County Council to the Owner indicating that the County Council wishes to negotiate and agree terms for the sale or as the case may be transfer of a parcel of Reserve Land;
“Additional Requirement”	any enhancement or a design feature (which may include additional sports or community facilities) for a school which is required by the Owner and which is in excess of the core requirements of the baseline standards the County Council and the DfE apply to a school of this size and location;
“Artificial Pitch”	a floodlit third generation artificial grass adult sized sports pitch (size: 106m x 70m) with associated infrastructure which complies with Football Association guidelines and Sports England standards at the District Centre Secondary School;
“Artificial Pitch Contribution”	the sum of £970,000 (nine hundred and seventy thousand pounds) Index Linked to be used towards the installation of an Artificial Pitch available for community use on the District Centre Secondary School Site at the District Centre Secondary School;
“Child Yield”	the demand for primary school places (i.e. for children aged between 4 (four) and 10 (ten) years old) and secondary school places (i.e. for children aged between 11 (eleven) and 16 (sixteen)) arising out of the Development once completed calculated using the Child Yield Calculation Methodology;
“Child Yield Calculation Methodology”	the methodology for calculating the Child Yield as follows: eligible dwelling – for those Residential Units of two beds or more the Child Yield is as follows:

- 0.3 of a primary age child;
- 0.21 of a secondary age child;

Residential Units of one-bed and those specifically to be occupied by people aged over 55 are excluded;

“Clean Condition”

free from any contamination existing buildings associated redundant features foundations and services excluding the water main on the Secondary School Site which would limit prevent or restrict the development and use of the School Sites for their intended purpose (to the reasonable satisfaction of the County Council as evidenced in writing) and the mitigation measures and recommendations detailed in any Environmental Statement together with any environmental contamination remediation scheme reasonably required by the County Council have been carried out to the County Council’s satisfaction;

“Community Use Agreement”

an agreement with the school sponsor and/ or such other body as agreed with the Borough Council and the County Council which secures access to and use of the Artificial Pitch to enable participation across all sectors of the community by hirers (which shall include but not be limited to individuals, sports clubs and community groups and school/educational groups) (“Hirers”) on reasonable financial terms. The terms of the agreement shall set out (but are not limited to):-

- (a) the periods of time when the facilities (i) will be available for hire or use by Hirers and (ii) will be in use by the District Centre Secondary School for the purposes of its curricular and extra-curricular activities;
- (b) the hiring fees (“the Hire Fees”) payable to the operator of the relevant School for the use which shall not exceed sums necessary to recover the reasonable costs of operation and maintenance of the facilities and make a reasonable contribution to the sinking fund to be set up for maintenance costs and replacement of the Artificial Pitch (“the Sinking Fund”);
- (c) the reasonable restrictions conditions and obligations which may be imposed on a Hirer to ensure the facilities are used only as intended for its proper purposes; and
- (d) the details of the circumstances and grounds under which the parties may terminate the agreement;
- (e) details of the uses for which the Sinking Fund may be used;

“Completion Certificate Standard”	a certificate issued by the County Council as highway authority pursuant to a Highways Agreement to denote completion of the Permanent School Access to the satisfaction of the County Council;
“DfE”	the Department for Education or successor body;
“District Centre Primary School”	a 2 form entry primary school within the meaning set out in the Education Acts;
“District Centre Primary School Expansion”	a 1 form entry expansion within the meaning set out in the Education Acts which forms part of the District Centre Primary School;
“District Centre Secondary School”	a 7-form entry secondary school within the meaning set out in the Education Acts required to mitigate the impact of the Development;
“District Centre Primary School Site”	that part of the Land being an area of a minimum of 2.8 hectares in the general location identified on the Land Use Plan;
“District Centre Secondary School Contribution”	the sum of £25,193,205 (twenty five million one hundred and ninety three thousand two hundred and five pounds) Index Linked payable in instalments as set out in this Schedule towards the capital costs of providing the District Centre Secondary School on the District Centre Secondary School Site part of which may be utilised for SEND provided that the financial contribution for SEND does not compromise the ability to deliver the District Centre Secondary School to accommodate all the secondary school pupils arising from the Development and to accord with all current DfE education standards;
“District Centre Secondary School Reserve Land”	1.89 hectares of land having a boundary contiguous with the District Centre Secondary School that shall be held in reserve for potential 2FE expansion of the District Centre Secondary School as set out in this Schedule;
“District Centre Secondary School Site”	that part of the Land being an area of a minimum of 7.72 hectares for a 7 form entry school in the location identified on the Land Use Plan;
“Early Years Facility”	land or a facility or facilities for the use of the Early Years Provision in at least four locations across the Land to accommodate the Early Years Provision;
	And “Early Years Facilities” shall be construed accordingly;
“Early Years Provision”	provision of education facilities for a minimum of 525 places in a minimum of 4 separate locations for children age 0-5 years to include both pre-school and day care facilities delivered by a mixture of community and private providers in

accordance with the requirement of the Welborne Infrastructure Delivery Plan 2018 Update ;

“Early Years Provision Marketing Plan”

a plan setting out the marketing strategy for the Early Years Provision which can be updated and varied from time to time as agreed with the Education Steering Group;

“Education Acts”

has the meaning given to it in section 578 of the Education Act 1996;

“Education Contributions”

The Northern Primary School Contribution, The Western Primary School Contribution, The First District Centre Primary School Contribution, The Second District Centre Primary School Contribution and The District Centre Secondary School Contribution and the Artificial Pitch Contribution and “Education Contribution” shall be construed accordingly;

“Education Steering Group”

the Borough Council, the County Council and the Owner, the individual members from whom are set out in the Terms of Reference AND additional members may be added with the full agreement of the Education Steering Group;

“Environmental Statement”

the Environmental Statement submitted in support of the application for the Permission;

“First District Centre Primary School Contribution”

the sum of £8,462,591 (eight million four hundred and sixty two thousand five hundred and ninety one pounds) Index Linked toward the capital costs of the 2FE District Centre Primary School part of which may be utilised for SEND provided that the financial contribution for SEND does not compromise the ability to deliver the District Centre Primary School to accord with all current DfE education standards;

“Gateway Process”

The County Council’s quality assurance process for the management of the cost, programme and design quality of the construction of the relevant primary or secondary school:

Gateway 1: To confirm that the scope of the relevant school project has been defined, the funding and overall timescales agreed and that it is ready to progress to Royal Institute of British Architects (“RIBA”) Stage 2.

Gateway 2: To confirm that the relevant school project is ready for the submission of a planning application and to progress to RIBA Stage 4.

Gateway 3: To confirm that the relevant school project is ready for contract award and ready to progress to RIBA stage 5 and commence construction.

Gateway 3.5: To confirm that the project is on budget and programme to the agreed completion date and that

arrangements are in place for handover and occupation, including contingency plans in the event of potential delay.

Gateway 4: To review project protocols, process and procedures post Practical Completion to inform subsequent school construction projects within the Development.

And Gateway Process Gateway 1 Gateway 2 Gateway 3 Gateway 3.5 and Gateway 4 shall be construed accordingly;

“Highways Agreement”	an agreement pursuant to (inter alia) section 38 and/or section 278 of the Highways Act 1980 to be entered into by the Owner with the County Council in respect of the carrying out and completion of the Permanent School Access;
“Land Registry Compliant Plan”	a plan showing the precise location size, ordnance survey mapping and boundaries including northings and eastings;
“Land Use Plan”	has the same meaning as in Clause 1 of this Deed;
“Neighbourhood Design Code”	the specific design code requirements for the Development in each particular Neighbourhood as approved pursuant to the Permission;
“Northern Primary School”	a two form entry primary school within the meaning set out in the Education Acts required to mitigate the impact of the Development;
“Northern Primary School Contribution”	the sum £8,462,591 (eight million four hundred and sixty-two thousand five hundred and ninety one pounds) Index Linked towards the capital costs of the Northern Primary School and part of which may be utilised for SEND provided that the financial contribution for SEND does not compromise the ability to deliver the Northern Primary School to accord with all current DfE education standards;
“Northern Primary School Site”	that part of the Land being an area of a minimum of 2.0 hectares for a two form entry school to be in part of the indicative location identified in light pink on the Land Use Plan;
“Permanent School Access”	the route across the Land to the relevant School Site boundary to be agreed with the County Council and to connect to the existing highway to be constructed to Completion Certificate Standard unless otherwise agreed in writing with the County Council acting reasonably, at the Owner's expense to provide a safe and accessible means of access to and from the relevant School Site for all users of the highways including but not limited to vehicles, cyclists, scooterists and pedestrians to include provision for (but not limited to) footways and crossing points;

“Practical Completion”	for the purposes of this Schedule only the date on which the relevant School building is certified to be complete for all practical purposes by the contract administrator;
“Programme”	the Programme submitted to the Education Steering Group referred to in paragraph 2 of this Schedule;
“Project Appraisal”	the decision of the County Council Executive Member for Education and Skills (or such other relevant County Council Member or officer as the case may be at the time the decision is made) to approve the design to allow a contract to be formed and signed for the construction of the relevant School Site and for the expenditure of the capital funding;
“Regulation 3 Application”	a planning application by the County Council to its Regulatory Committee for planning permission for the School;
“Reserve Land”	the District Centre Secondary School Reserve Land and the Western Primary School Reserve Land;
“Second District Centre Primary School Contribution”	the sum of £4,231,295 (four million, two hundred and thirty one thousand, two hundred and ninety five pounds) Index Linked towards the capital costs of the 1FE District Centre Primary School Expansion part of which may be utilised for SEND provided that the financial contribution for SEND does not compromise the ability to deliver the District Centre Primary School Expansion to accord with all current DfE education standards;
“SEND”	the expansion of existing or the provision of new special educational needs facilities or services within the Development or within 10miles of the Development to meet the special educational needs arising from the Development to be agreed with the Education Steering Group;
“School Haul Route”	the haul route or routes to each School Site to give access for construction traffic to and from the public highway, to be agreed with the County Council;
“Schools”	the Northern Primary School, the Western Primary School, the District Centre Primary School and the District Centre Secondary School and the District Centre Primary School Expansion and “School” is to be constructed accordingly
“School Sites”	each or all of the sites on which the respective Schools are to be provided in accordance with this Deed and referred to herein as Northern Primary School Site, Western Primary School Site, District Centre Primary School and District Centre Secondary School Site and the Reserve Land respectively and “School Site” is to be construed accordingly;

“School Construction Works”	material building/engineering works undertaken on the School Sites pursuant to the aim of constructing and delivering the relevant school;
“School Site Contributions”	the First District Centre Primary School Contribution, The Second District Centre Primary School Contribution, the Western Primary School Contribution, the Northern Primary School Contribution and the District Centre Secondary School Contribution and the Artificial Pitch Contribution “School Site Contribution” shall be construed accordingly;
“School Transfer Date”	the date of the freehold land transfer to the County Council of the relevant School Site;
“School Transfer Notice”	a written notice served by the County Council on the Owner requesting the Owner to transfer the freehold of a School Site to the County Council (or its nominee);
“Serviced Land”	land in Clean Condition suitable for education facilities; upon which all Services are provided and available onto the School Site without any interruption and capable of connection at no unusual or exceptional costs;
“Services”	<p>the provision to the relevant boundary of any land or building within the Land at points and locations to be agreed with the County Council as appropriate of such of the items referred to in paragraphs (a) to (e) below which shall be necessary to enable any land or building on the School Site to function for the use permitted all of which items referred to in paragraphs (a) to (e) below shall have adequate capacity to serve School Sites:</p> <ul style="list-style-type: none"> (a) vehicular cycle and pedestrian access complete with binder course, level surfaced footways, signing, lining, landscaping and kerbing; (b) the apparatus required to facilitate the mains supply of adequate capacity and connection of water, soil effluent, electricity, telephone and data communications and any relevant alternative heat sources across the Land; (c) the apparatus required to facilitate the mains supply of adequate capacity and connection of gas or an alternative heat source to be agreed with the County taking into account affordability and viability for both the County Council and the Owner and carbon reduction but to be provided in any event at the Owner’s expense; (d) foul water drainage system for each School Site of a sufficient capacity to be agreed with the County Council ready for use

- (e) surface water drainage outfalling from on-plot sustainable drainage systems constructed by the County Council providing the necessary attenuation and water quality treatment measures as required by the local flood authority (or the Environment Agency in the instance of effluent requiring an Environmental permit) to a surface water sewer or watercourse which abuts the School Site at the time of transfer of the School Site to the County Council such sewer or system constructed to a standard in force at the time of provision agreed with the relevant authority as the case may be AND FOR THE AVOIDANCE OF DOUBT surface water drainage discharge points will not be provided in the event the School Site is suitable for on-site infiltration in accordance with Environment Agency Guidance, the Building Regulations and CIRIA C156

“Services Additional Costs”	the reasonable additional costs in design and/or physical works incurred or to be incurred by the County Council as a result of the Owner making any material changes to the service connection points for any of the School Sites including but not limited to moving connection points away from the boundary of the relevant School Site.
“Statutory Guidance for Early Years Provision”	the statutory framework for the early years foundation stage published by the DfE effective from 3 April 2017 and the statutory guidance for local authorities for early years and childcare published by the Department for Education June 2018;
“Strategic Design Codes”	the strategic design code requirements for the Development as approved pursuant to the Permission;
“Temporary Parking Strategy”	a strategy for the provision of temporary parking for parents which will include details of location, timescales and quantum;
“Temporary Services”	a temporary supply of electricity and water with sufficient capacity to enable the County Council's appointed contractor to construct a School on each or any of the School Sites as appropriate to the reasonable satisfaction of the County Council;
“Terms of Reference”	the terms of reference for the Education Steering Group attached as Appendix 5 and dated 9 September 2021;
“Town Architect”	the architect appointed by the Owner to oversee and provide recommendations on the design of each part of the Development to ensure each part's design conforms to the design of the overall Development;
“Town Landscape Architect”	the landscape architect appointed by the Owner to oversee and provide recommendations on the design of each part of

landscaping of the Development to ensure each part's landscaping conforms to the landscape design of the overall Development;

“Transfer”

(unless otherwise agreed in writing) a transfer of the freehold interest of a School Site which shall include a requirement for the School Site to be used for educational purposes only and for no other purpose other than ancillary community use on terms to be agreed between the Owner and the County Council (both acting reasonably) in accordance with paragraph 13.2 of this Schedule and “Transferred” shall be construed accordingly;

“Western Primary School”

a 2FE primary school within the meaning set out in the Education Acts required to mitigate the impact of the Development;

“Western Primary School Contribution”

the sum of £8,462,591 (eight million four hundred and sixty two thousand five hundred and ninety one pounds) Index Linked towards the capital costs of the Western Primary School part of which may be utilised for SEND provided that the financial contribution for SEND does not compromise the ability to deliver the Western Primary School to accord with all current DfE education standards;

“Western Primary School Reserve Land”

0.8 hectares of land that shall be held in reserve for potential 1 FE expansion of the Western Primary School Site with boundaries contiguous with the Western Primary School Site as set out in this Schedule;

“Western Primary School Site”

that part of the Land being an area of a minimum of 2 hectares for a 2FE in the location identified on the Land Use Plan;

2 PROGRAMME FOR DELIVERY OF SCHOOLS

2.1 Prior to Commencement of Development the County Council shall submit to the Education Steering Group the Programme for the delivery of the Schools to accommodate pupils arising from the Development. The Programme shall:

- 2.1.1 include sufficient time within each stage of delivery to properly engage with the Education Steering Group to meet the requirements of paragraph 7 of this schedule; and
- 2.1.2 acknowledge that the sequence of the Western Primary School and the District Primary School will be determined by the phasing and build out of the Development and this will be discussed and agreed with the Education Steering Group; and
- 2.1.3 include a delivery timetable which has regard to the school openings to occur in September to coincide the start of the academic year and which sets out the following target opening dates (which may be varied as required and agreed by the Education Steering Group in accordance with paragraph 2.2 below):

- (a) the opening of the first 2FE shall be in the September prior to the Occupation of 600 Residential Units
- (b) the opening of the second 2FE shall be in the September prior to the Occupation of 2000 Residential Units
- (c) the opening of the third 2FE shall be in the September prior to the Occupation of 3900 Residential Units
- (d) the opening of final 1FE shall be in the September prior to the Occupation of 5600 Residential Units
- (e) the target opening date of the secondary school shall be in the September prior to the Occupation of 3600 Residential Units;

2.2 The Programme submitted to the Education Steering Group pursuant to paragraph 2.1 of this Schedule shall be reviewed against the annual statement provided pursuant to paragraph 11.3 and adjusted accordingly.

3 NORTHERN PRIMARY SCHOOL

3.1 The Owner covenants with the Borough Council and the County Council that following Commencement of Development it shall pay the Northern Primary School Contribution to the County Council as follows:

- 3.1.1 5% upon 20 Working Days from the County Council providing evidence of having completed Gateway 1 for the Northern Primary School ("the First Instalment");
- 3.1.2 45% upon 5 Working Days from the County Council providing evidence of having completed Gateway 3 for the Northern Primary School ("the Second Instalment");
- 3.1.3 45% upon 6 months from the date of the Second Instalment provided that the School Construction Works for the Northern Primary School remain ongoing as at the date that this payment becomes due;
- 3.1.4 5% upon Practical Completion of the School Construction Works;

3.2 The Owner covenants with the Borough Council and the County Council:

- 3.2.1 no later than six months from the date of this Deed to submit and agree with the County Council a Land Registry Compliant Plan for the Northern Primary School Site; and
- 3.2.2 not to Occupy any Residential Unit until and unless the Owner has submitted to and agreed with the County Council a Land Registry Compliant Plan for the Northern Primary School Site in accordance with paragraph 3.2.1 and
- 3.2.3 not to commence development on any Residential Unit until the Owner has submitted to and agreed with the County Council the Land Registry Compliant Plan Northern Primary School Site in accordance with paragraph 3.2.1.

3.2.4 to reserve and leave undeveloped, and not to develop the Northern Primary School Site until the Transfer of the Northern Primary School Site in accordance with this Schedule.

3.3 The County Council agrees to:

3.3.1 apply the Northern Primary School Contribution towards the capital costs of the provision of Northern Primary School in accordance with this Schedule;

3.3.2 accept the Transfer of the Northern Primary School Site from the Owner in accordance with the terms of this Deed;

3.3.3 use the Northern Primary School Site only for educational purposes only and for no other purpose other than ancillary community use on terms to be agreed between the Owner and the County Council (both acting reasonably)

4 WESTERN PRIMARY SCHOOL

4.1 The Owner covenants with the Borough Council and the County Council that following Commencement of Development it shall pay the Western Primary School Contribution to the County Council in accordance with the Programme as follows:

4.1.1 5% upon 20 Working Days from the County Council providing evidence of having completed Gateway 1 for the Western Primary School ("the First Instalment");

4.1.2 45% upon 5 Working Days from the County Council providing evidence of having completed Gateway 3 for Western Primary School ("the Second Instalment");

4.1.3 45% upon 6 months from the payment of the Second Instalment provided that the School Construction Works for the Western Primary School remain ongoing as at the date that this payment becomes due.

4.1.4 5% upon Practical Completion of the School Construction Works

4.2 The Owner covenants with the Borough Council and the County Council:

4.2.1 If the Western Primary School Site is to be transferred to the County Council as the second primary school to be delivered on the Development not to Commence construction of more than 750 Residential Units until it has submitted and agreed with the County Council a Land Registry Compliant Plan for the Western Primary School Site in accordance with the Programme; or

4.2.2 If the Western Primary School Site is to be transferred to the County Council as the third primary school to be delivered on the Development not to Commence construction of more than 2495 Residential Units until it has submitted and agreed with the County Council a Land Registry Compliant Plan for the Western Primary School Site in accordance with the Programme and

4.2.3 to reserve and leave undeveloped, and not to develop the Western Primary School Site until the Transfer of the Western Primary School Site in accordance with this Schedule.

4.3 The County Council agrees to:

- 4.3.1 apply the Western Primary School Contribution towards the capital costs of the provision of the Western Primary School in accordance with paragraph 4 of this Schedule; and
- 4.3.2 accept the Transfer of the Western Primary School Site from the Owner in accordance with the terms of this Deed;
- 4.3.3 use the Western Primary School Site for educational purposes only and for no other purpose other than ancillary community use on terms to be agreed between the Owner and the County Council (both acting reasonably)

5 DISTRICT CENTRE PRIMARY SCHOOL

5.1 The Owner covenants with the Borough Council and the County Council that following Commencement of Development it shall pay the First District Centre Primary School Contribution to the County Council (unless otherwise in agreed in writing following review of the Programme) as follows:

- 5.1.1 5% upon 20 Working Days from the County Council providing evidence of having completed Gateway 1 for the District Centre Primary School ("the First Instalment");
- 5.1.2 45% upon 5 Working Days from the County Council providing evidence of having completed Gateway 3 for the District Centre Primary School ("the Second Instalment");
- 5.1.3 45% upon 6 months from the payment of the Second Instalment provided that the School Construction Works for the District Centre Primary School remain ongoing as at the date that this payment becomes due;
- 5.1.4 5% upon Practical Completion of the School Construction Works.

5.2 The Owner covenants with the Borough Council and the County Council that following Commencement of Development it shall pay the Second District Centre Primary School Contribution to the County Council (unless otherwise in agreed in writing following review of the Programme) as follows:

- 5.2.1 5% upon 20 Working Days from the County Council providing evidence of having completed Gateway 1 for the District Centre Primary School Expansion ("the First Instalment");
- 5.2.2 45% upon 5 Working Days from the County Council providing evidence of having completed Gateway 3 for the District Centre Primary School Expansion ("the Second Instalment");
- 5.2.3 45% upon 6 months from the payment of the Second Instalment provided that the School Construction Works for the District Centre Primary School Expansion remain ongoing as at the date that this payment becomes due;
- 5.2.4 5% upon Practical Completion of the School Construction Works.

5.3 The Owner covenants with the Borough Council and the County Council:

- 5.3.1 If the District Centre Primary School Site is to be transferred to the County Council as the second primary school to be delivered on the Development not to Commence construction of more than 750 Residential Units until it has submitted and agreed with the County Council a Land Registry Compliant Plan for the District Centre Primary School Site in accordance with the Programme and for the avoidance of doubt the location size and boundaries of the District Centre Primary School Site may be adjusted if the presence of the water main and water main easement adversely affects the ability to deliver the school building or associated infrastructure that cannot be located within the easement. The County Council should use all reasonable endeavours to design the School, take account, and incorporate the water main and water main easement within the School Site;
- 5.3.2 If the District Centre Primary School Site is to be transferred to the County Council as the third primary school to be delivered on the Development not to Commence construction of more than 2495 Residential Units until it has submitted and agreed with the County Council a Land Registry Compliant Plan for the District Primary School Site in accordance with the Programme and for the avoidance of doubt the location size and boundaries of the District Centre Primary School Site may be adjusted if the presence of the water main and water main easement adversely affects the ability to deliver the school building or associated infrastructure that cannot be located within the easement. The County Council should use all reasonable endeavours to design the School, take account, and incorporate the water main and water main easement within the School Site; and
- 5.3.3 to reserve and leave undeveloped, and not to develop the District Centre Primary School Site until the Transfer of the District Centre Primary School Site in accordance with this Schedule.

5.4 The County Council agrees to:

- 5.4.1 apply the First District Centre Primary School Contribution and The Second District Centre Primary School Contribution towards the capital costs of the provision of the District Centre Primary School in accordance with this paragraph 5 of this Schedule;
- 5.4.2 accept the Transfer of the District Centre Primary School Site from the Owner in accordance with the terms of this Deed;
- 5.4.3 use the District Centre Primary School Site only for educational purposes only and for no other purpose other than ancillary community use on terms to be agreed between the Owner and the County Council (both acting reasonably).

6 DISTRICT CENTRE SECONDARY SCHOOL

- 6.1 The Owner covenants with the Borough Council and the County Council that following the Commencement of Development it shall pay the District Centre Secondary School Contribution to the County Council as follows:
- 6.1.1 5% no later than 20 Working Days from the County Council providing evidence of it having completed Gateway 1 for the District Centre Secondary School ("the First Instalment");

- 6.1.2 30% upon 5 Working Days from the County Council providing evidence of having completed Gateway 3 for the District Centre Secondary School ("the Second Instalment");
 - 6.1.3 30% upon 6 months from the payment of the Second Instalment provided that the School Construction Works for the District Centre Secondary School remain ongoing as at the date that this payment becomes due ("the Third Instalment");
 - 6.1.4 30% upon 6 months from the payment of the Third Instalment provided that the School Construction Works for the District Centre Secondary School remain ongoing as at the date that this payment becomes due;
 - 6.1.5 5% upon Practical Completion of the School Construction Works
- 6.2 The Owner covenants with the Borough Council and the County Council:
- 6.2.1 to submit and agree with the County Council a Land Registry compliant plan no later than Gateway 1 showing the precise location size and boundaries of the District Centre Secondary School Site and for the avoidance of doubt the location size and boundaries of the District Centre Secondary School Site may be adjusted if the presence of the water main and water main easement adversely affects the ability to deliver the school building or associated infrastructure cannot be located within the easement. The County Council should use all reasonable endeavours to design the School to take account and incorporate the water main and water main easement within the School Site; and
 - 6.2.2 not to Occupy any further Residential Units after Gateway 1 for the District Centre Secondary School until and unless the Owner has submitted to and agreed with the County Council a Land Registry Compliant Plan for the District Centre Secondary School in accordance with paragraph 6.2.1; and
 - 6.2.3 to reserve and leave undeveloped, and not to develop the District Centre Secondary School Site until the Transfer of the District Centre Secondary School Site in accordance this Schedule;
- 6.3 The Owner covenants with the County Council that it shall pay the Artificial Pitch Contribution to the County Council within 30 days of the County Council confirming it has completed stage 3 of the Gateway Process for the District Centre Secondary School
- 6.4 The County Council agrees to:
- 6.4.1 apply the District Centre Secondary School Contribution towards the provision of the District Centre Secondary School in accordance with this paragraph 6 of this Schedule;
 - 6.4.2 accept the Transfer of the District Centre Secondary School Site from the Owner in accordance within the terms of this Deed;
 - 6.4.3 use the District Centre Secondary School Site only for educational purposes only and for no other purpose other than ancillary community use on terms to be agreed between the Owner and the County Council (both acting reasonably) and pursuant to the terms of any Community Use Agreement in place in respect of the Artificial Pitch;

7 EDUCATION STEERING GROUP

- 7.1 The Owner, the Borough Council and the County Council covenant to engage in and have reference to the Education Steering Group and abide by the terms of reference of the Education Steering Group in carrying out any action in compliance with the obligations in Schedule 2, provided that the County Council and the Borough Council are not required to take any action that would fetter their discretion to carry out their duty as a relevant authority.
- 7.2 The County Council covenants to:
- 7.2.1 keep the Owner informed of the process and timescale for selecting a sponsor for each of the Schools
 - 7.2.2 use reasonable endeavours to ensure the school operator engages with the Education Steering Group and the Owner on the naming of the school/schools;
 - 7.2.3 give due consideration to the reasonable and proper views and representations of the Owner and the Education Steering Group on all matters that fall within the remit of that body but the County Council's decision as local education authority shall be final.

8 SCHOOL SITES DESIGN AND CONSTRUCTION

- 8.1 The County Council covenants with the Owner that in respect of each School Site it shall;
- 8.1.1 design procure and construct the Schools in accordance with this paragraph 8.1.1 regularly engage with the Education Steering Group about the development of the design and specification for each School and shall provide the Education Steering Group not less than 14 days (unless otherwise agreed in writing) to review any plans/designs/specifications and take into consideration any representations from the Education Steering Group on changes to be made to the School designs and where the County Council agrees (not to be unreasonably withheld or delayed) with those representations amend the School designs accordingly assuming they are cost neutral or additional funding is provided as part of the Additional Requirement;
 - 8.1.2 regularly engage with the Town Architect and Town Landscape Architect about the development of the design for each School and take into consideration any representations of the Town Architect and the Town Landscape Architect on changes to be made to the School designs such representations to be made in writing to the County Council as soon as reasonably practicable following receipt of information about the designs from the County Council and where the County Council agrees (not to be unreasonably withheld or delayed) with those representations the County Council shall amend the School Sites designs accordingly assuming they are cost neutral or additional funding is provided as part of the Additional Requirement;
 - 8.1.3 ensure that the design of any School meets the school design statement, Strategic Design Codes and the relevant Neighbourhood Design Code (if any) SUBJECT ALWAYS TO the Owner's covenants at paragraph 8.2 below and has regard to the need for an artificial sports pitch on the Secondary School Site, funded by the Owner, and any other school sports facilities to be made available to the community in accordance with paragraph 9;

- 8.1.4 not to submit a Regulation 3 Application until it has obtained written approval from the Owner to the proposed costs of the works for the Additional Requirement;
 - 8.1.5 ensure the Gateway Process is followed at each stage of the design and construction of each of the School Sites and shall not progress to the next stage of such process without consulting the Education Steering Group in writing.
- 8.2 The Owner covenants that if it requests amendments to the design of a School which are an Additional Requirement then the Owner shall agree with the County Council the cost of the Additional Requirement (both parties acting reasonably) and the Owner shall pay to the County Council any reasonable additional costs incurred by the County Council in including the Additional Requirement no earlier than the commencement of the development of the relevant School and within 30 Working Days of the County Council providing evidence of having completed Gateway 3 for the relevant School.
- 8.3 If it is agreed in writing between the Owner and the County Council that there is an abnormal feature on a School Site which would prevent or restrict the development and use of the School Sites for their intended purpose the Owner shall pay on demand to the County Council the Abnormal Feature Contribution.
- 8.4 If the Owner fails to comply with its obligations and covenants contained in paragraphs 10.6 and 10.7 below which would prevent or restrict the development and use of the School Sites for their intended purpose or delay the transfer of a School Site to the County Council in accordance with the provisions of this Schedule the County Council, having served a Material Breach Notice in accordance with clause 7 of this Deed, may in order that the construction and opening of the School proceed in accordance with the Programme take all reasonable measures to ensure that the relevant provisions are complied with and recharge its reasonable costs and expenses to the Owner.

9 COMMUNITY USE OF SPORTS FACILITIES AND DISTRICT ARTIFICIAL SPORTS PITCH

- 9.1 The County Council shall in respect of the District Centre Secondary School Site:
 - 9.1.1 ensure that the advert for procuring the school operator makes reference to the requirement for a Community Use Agreement to comply with this paragraph 9;
 - 9.1.2 upon appointment of a school operator use best endeavours to work with the school operator and the Borough Council to draw up and complete the Community Use Agreement as soon as possible;
 - 9.1.3 use best endeavours prior to the commencement of construction of the District Secondary School and no later than the opening of the District Centre Secondary School to procure that any operator of the District Centre Secondary School (PROVIDED ALWAYS that a school operator is in place) shall enter into and observe the terms of a Community Use Agreement with the Borough Council and the County Council for the Artificial Pitch.
- 9.2 The County Council will use best endeavours to obtain a commitment from operators of the Schools to:
 - 9.2.1 provide community access to school facilities in line with their community function;

- 9.2.2 notify the Borough Council and the Estate Management Company of the facilities, the times the facilities would be available and who to contact to book the facilities, provided always any such use to be managed and controlled by the head teacher and governors of each School; and
 - 9.2.3 procure that a Community Use Agreement is entered into in relation to any sports or community facility that is provided as an Additional Requirement.
- 9.3 The Borough Council and the County Council shall request the head teacher and governors of the District Centre Secondary School to invite the Estate Management Company to undertake the role of committee member or trustee (or similar position) as may be appropriate of the Community Use Agreement steering group (or similar body) as may be appropriate.

10 ACCESS AND SERVICES TO SCHOOL SITES AND RESERVE LAND

- 10.1 The Owner covenants with the Borough Council and the County Council as follows in respect of the School Sites and each individual School Site and each parcel of Reserve Land where transferred:
- 10.1.1 to use reasonable endeavours to procure for or grant to (as the case may be) the County Council and its contractors consultants servants and agents upon receipt of not less than 10 Working Days' written notice (unless a shorter period can be agreed) access to the School Sites for the purpose of undertaking lawful surveys and site investigations (including soil tests);
 - 10.1.2 to notify the County Council prior to any negotiations with telecommunications and data communications providers and site wide heat providers which may serve the School Sites and to take account of any reasonable representations made by the County Council within 5 Working Days of notification such to facilitate that Services and conduits for telecommunications and data communications are compatible with the County Council construction works to (amongst other things) ensure that the County Council is not bound to use one single provider of telecommunications and/or data communications upon the School Sites;
 - 10.1.3 to provide to the County Council details of the proposed location and design of the infrastructure relating to the School Sites and all parts of the Land immediately adjacent to (or impacting upon the design of) the School Sites including but not limited to highways (carriageways road alignment levels footways and lighting etc) drainage (levels capacity connections invert levels flood/storm water strategy) and mains supplies (water electricity communications) have been provided to the County Council no later than Gateway 1 for the relevant School Site (unless otherwise agreed in writing between the Owner and the County Council) with the final construction detail being finalised by Gateway 3 for the relevant School Site; and
 - 10.1.4 the Owner further covenants that should it require any material change to the design for a School between Gateway 1 and Gateway 3 which the County Council is able to accommodate it shall pay to the County Council any additional costs incurred by the County Council in including any such changes within 30 Working Days of the County Council submitting a written request for payment to the Owner; and
 - 10.1.5 not to Occupy any further Residential Units after Gateway 3 for each School Site unless and until the final construction details of the services relating to the

School Sites as referred to in 10.1.3 and 10.1.4 have been finalised for the relevant School Site;

- 10.1.6 for the avoidance of doubt it is agreed between the Parties that any consents permissions or licences required in connection with the presence of the water main on the sites for the District Centre Primary School the District Centre Secondary School the District Centre Secondary School Reserve Land shall be obtained by the Owner at the Owner's expense.
- 10.2 From Commencement of Development the Owner covenants not to use the relevant School Sites for storage of spoil or construction materials.
- 10.3 No later than Gateway 1 for each of the School Sites the Owner shall submit to the County Council the following:
 - 10.3.1 copies of all environmental contamination ecological archaeological geotechnical acoustic topographical and all other surveys undertaken by or on behalf of the Owner in respect of that part of the Development comprising the relevant School Site;
 - 10.3.2 proposals for dealing with the implications of the surveys detailed within 10.3.1 hereof together with a programme for implementation of works and measures arising out of the surveys as soon as reasonably practicable following agreement of a site location plan for the relevant School Site (unless otherwise agreed in writing between the Owner and the County Council);
- 10.4 The Owner covenants prior to the School Transfer Date:
 - 10.4.1 to secure the boundaries of the relevant School Site with 1.8-metre-high temporary secure fencing for construction purposes to the reasonable satisfaction of the County Council and to install vehicular access gates in a position or positions to be requested and approved by the County Council; and
 - 10.4.2 to submit to the County Council for its approval (not to be unreasonably withheld or delayed) a plan in respect of the removal of any trees upon the relevant School Site which in the opinion of the County Council acting reasonably impede the development of a School's building and facilities;
 - 10.4.3 upon approval of HM Land Registry compliant plans detailed within paragraphs 3.2.1, 4.2.1, 5.3.1 and 6.2.1 above at its own expense to carry out the removal of any trees (including the clear felling of all the trees, removal of all root systems and removal from the School Site of all lumber) in strict accordance with the plans, subject to any necessary third party approvals and consents and to the satisfaction of the County Council;
- 10.5 The Owner covenants not to Occupy the Residential Units as set out below unless and until the provisions of paragraph 10.6 below have been complied with:
 - 10.5.1 in relation to Northern Primary School Site, no more than 165 Residential Units;
 - 10.5.2 in relation to Western Primary School Site;
 - (a) if it is to be delivered as the second primary school on the Development no more than 1435 Residential Units (unless otherwise agreed in writing between the Owner and the County Council); or

- (b) if is to be delivered as the third primary school on the Development no more than 3285 Residential Units (unless otherwise agreed in writing between the Owner and the County Council).

10.5.3 in relation to District Centre Primary Site;

- (a) if it is to be delivered as the second primary school on the Development no more than 1435 Residential Units (unless otherwise agreed in writing between the Owner and the County Council); or
- (b) if is to be delivered as the third primary school on the Development no more than 3285 Residential Units (unless otherwise agreed in writing between the Owner and the County Council).

10.5.4 in relation to the District Centre Secondary School Site, no more than 2760 Residential Units (unless otherwise agreed in writing between the Owner and the County Council).

10.6 No more Residential Units shall be Occupied pursuant to paragraph 10.5 above unless and until:

- 10.6.1 the relevant School Site has been cleared and is in Clean Condition suitable for education facilities free from any features other than existing trees and hedges and ditches which would prevent or restrict its development or use as a School Site to the satisfaction of the County Council and in any case allowing for the required hectares of usable land;
- 10.6.2 all overground cables on or adjacent to or within 15 metres of the Northern Primary School Site have been undergrounded beyond the boundary of the Northern Primary School Site and any easements secured to the satisfaction of the County Council
- 10.6.3 the mitigation measures and recommendations detailed in the Environmental Statement in respect of the relevant School Site and any parts of the Land immediately adjacent to (or otherwise impacting on the design of) the relevant School Site as reasonably required by the County Council have been completed to the reasonable satisfaction of the County Council;
- 10.6.4 the Owner has submitted to the County Council the details and documentation required to be submitted pursuant to paragraph 10.3.1 and 10.3.2 and any environmental contamination remediation scheme geotechnical scheme ecological scheme or acoustic scheme or archaeological mitigation reasonably required by the County Council or arising pursuant to paragraph 10.3.1 above in respect of the relevant School Site and any parts of the Land immediately adjacent to the relevant School Site reasonably required by the County Council has been implemented by the Owner and completed to the reasonable satisfaction of the County Council;
- 10.6.5 any charge over the relevant School Site and any registered title entry which would in the reasonable opinion of the County Council materially adversely affect the development and use of the relevant School Site has been released and all necessary steps have been taken to enable the County Council or its nominee to be registered with an absolute freehold title at HM Land Registry free from encumbrances (for the avoidance of doubt any existing water main

apparatus at the District Centre Secondary School Site is not an encumbrance);

10.6.6 the freehold interest of the relevant School Site has been Transferred to the County Council or its nominee free from any public or third party or other encumbrances (for the avoidance of doubt any existing water main apparatus at the District Centre Secondary School Site is not an encumbrance) (with the exception of the Community Use Agreement referred to in this agreement) with vacant possession on completion at nil consideration and in the form to be agreed pursuant to paragraph 13.2 having complied with the obligations set out in this Schedule together with and all necessary rights to use for so long as is required:

- (a) the Temporary Services and School Haul Route;
- (b) the Services;
- (c) the Permanent School Access; and
- (d) any rights, easements, wayleaves, consents, agreements or other matters as may be reasonably required by the County Council and/or utility provider companies over such parts of the Land as are reasonably required for the development and use of the relevant School Site for its intended purpose or by any provider of Services to the relevant School Site to enable the continued and uninterrupted provision of the Services.

10.6.7 any unexploded ordnance on the relevant School Site has been removed (or shall provide within the Transfer of the relevant School Site that it will remain responsible for the full costs of procuring such removal post transfer to the County Council) together with any proper and reasonable costs incurred or to be incurred by the County Council in providing temporary accommodation (if reasonably necessary) should removal of such ordnance take longer than 24 hours and any proper and reasonable costs associated with the extension of construction of the relevant School.

10.7 The Owner covenants with the County Council:

10.7.1 to procure and ensure that the relevant School Site has Temporary Services and a School Haul Route to the reasonable satisfaction of the County Council prior to the School Transfer Date for the relevant School;

10.7.2 to notify the County Council of any changes to the connection points for the Services as soon as practicable and if such change occurs after Gateway 3 results in a Services Additional Cost, to agree such cost with the County Council as soon as possible and to pay the County Council the Services Additional Cost within 30 days of reaching agreement.

10.7.3 to use reasonable endeavours to ensure that the relevant School Site is Serviced Land to the reasonable satisfaction of the County Council on the School Transfer Date and in any event to ensure that the relevant School Site is Serviced Land to the reasonable satisfaction of the County Council within 6 (six) months after the Commencement of the development of the relevant primary school and within 9 (nine) months after the Commencement of development of the District Centre Secondary School;

- 10.7.4 to maintain or procure the maintenance of the Services serving the relevant School Site at its own expense and where necessary renew repair and replace them to the reasonable satisfaction of the County Council until the relevant Statutory Undertaker has assumed responsibility for maintenance repair renewal and replacement whichever is the later or in the case of foul water drainage until the same have been adopted by the relevant Statutory Undertaker;
- 10.7.5 to maintain or procure the maintenance of the Temporary Services serving the relevant School Site at its own expense and where necessary renew repair and replace them to the reasonable satisfaction of the County Council until the relevant School Site has been provided with Services when the provisions of paragraph 10.7.4 above shall apply;
- 10.7.6 to use reasonable endeavours to maintain the relevant School Haul Route so that it can be safely used by construction traffic accessing the relevant School Site until it has provided the Permanent School Access to Completion Certificate Standard;
- 10.7.7 to provide Permanent School Access to Completion Certificate Standard not later than within 9 (nine) months after the Transfer of the relevant primary school to the County Council and within 16 (sixteen) months after the Transfer of the District Centre Secondary School to the County Council unless otherwise agreed in writing with the County Council.
- 10.8 To provide all reasonable voice telecommunications Services to the relevant School Site boundary a minimum of 3 months prior to Practical Completion of the relevant School and in locations agreed by the County Council and meeting the industry-accepted standard in force at the School Transfer Date.
- 10.9 In the event that two months prior to opening a School the County Council notify the Owner that permanent parking facilities are not going to be available upon the opening of a School the Owner may agree a temporary parking strategy in writing with the County Council provided that the temporary parking strategy contains an agreed end date for the temporary parking provision and it does not inhibit Development on any other part of the Land.
- 10.10 To pay the County Council's reasonable and properly incurred legal and surveyors fees in connection with the Transfer to the County Council of each of the School Sites

11 CHILD YIELD AND RESERVE LAND

- 11.1 The Owner shall safeguard the District Centre Secondary School Reserve Land and the Western Primary School Reserve Land from the Commencement of Development until such time as it has been transferred to the County Council pursuant to this paragraph or until it has been confirmed that it is not required by the County Council pursuant to paragraph 11.6 below.
- 11.2 The Owner agrees that it shall not use the District Centre Secondary School Reserve Land or the Western Primary School Reserve Land for any purpose during the period detailed in paragraph 11.1 above without the consent of the County Council and shall take all necessary steps as a responsible landowner to ensure that the Reserve Land is and remains free from any public or third-party rights or other encumbrances (for the avoidance of doubt any existing water main apparatus at the District Centre Secondary School Reserve Land is not an encumbrance) which would adversely affect the use of the Reserve Land or construction of buildings or other relevant facilities on any part of the Reserve Land for educational or ancillary community use.

- 11.3 The Owner shall provide the County Council with an annual statement commencing on the first day of October following the first Occupation of a Residential Unit on the Development and annually thereafter and ending upon the Occupation of the final Residential Unit which shall include:
- 11.3.1 confirmation of the number of Residential Units that have been Occupied in the Development at the date of the statement; and
 - 11.3.2 a future delivery plan estimating the amount of Residential Units that shall be constructed and Occupied in the next 12 month period; and
 - 11.3.3 details of the completion or estimated delivery of any one bedroom Residential Units and any Residential Units restricted to the Occupation of residents over the age of 55 or Extra Care Units
- 11.4 The Owner covenants not to Occupy any further Residential Units from the date the annual statement required pursuant to paragraph 11.3 is due until paragraph 11.3 has been complied with.
- 11.5 The County Council will use the annual statements provided pursuant to paragraph 11.3 above to review the Child Yield on a yearly basis throughout the period of Development and should the Child Yields exceed the 0.3 and/or 0.21 figures in Child Yield Calculation Methodology the County Council shall notify the Owner and the Owner shall Transfer the District Centre Secondary School Reserve Land or the Western Primary School Reserve Land to the County Council within six months of receipt of such notification at nil consideration to enable the County Council to improve and expand the relevant School to cater for the increased demand created by the Development.
- 11.6 The Owner agrees that where the District Centre Secondary School Reserve Land or the Western Primary School Reserve Land is required to be Transferred to the County Council at nil consideration pursuant to the provisions of this Schedule this paragraph 11 shall apply in respect of such Transfer.
- 11.7 In the event that the District Centre Secondary School Reserve Land or the Western Primary School Reserve Land or any part thereof has not been requested by the County Council pursuant to this paragraph 11 by the Occupation of 5500 Residential Units on the Development the Owner shall be released from its obligation to safeguard the District Centre Secondary School Reserve Land or the Western Primary School Reserve Land as required by paragraph 11.1 and subject to all necessary consents may use the land for its own purposes.
- 11.8 If the County Council requires for the transfer of the District Centre Secondary School Reserve Land or the Western Primary School Reserve Land pursuant to paragraphs 11.5 and 11.6 above it shall use the land only for educational purposes or ancillary community use and the Owner shall complete the transfer of any such land within 2 months of the County Council confirming its election in writing.

12 EARLY YEARS EDUCATION

- 12.1 The Owner covenants with the County Council:
- 12.1.1 That it shall plan for and safeguard sufficient land within the Land to deliver the Early Years Provision for operation by commercial operators in accordance with the provisions of the clause below;

- 12.1.2 In the event that the DfE makes any amendments to the Statutory Guidance for Early Years Provision published on 3 April 2017 and such amendments require material additional cost than has been allocated by the Owner for the delivery of Early Years Provision as set out in the Welborne Infrastructure Delivery Plan 2018 Update, then the Owner shall notify the County Council and the Borough Council of the additional costs and provision evidence, such additional cost shall then be taken into account in the subsequent viability reviews to be carried out in accordance with Schedule 10 or the County Council and the Borough Council may agree alternative Early Years Provision having regard to additional costs, such alternative provision to be in discretion of both Councils working together and acting reasonably PROVIDED ALWAYS that such Early Years Provision meets the current statutory guidance in force at the time;
- 12.1.3 not to Commence Development of any Residential Units unless and until a plan identifying the indicative location and size type and details of the timings of the Early Years Facilities on the Land has been submitted to the Education Steering Group and approved such plan can be amended from time to time with agreement from the Education Steering Group and the County Council and to identify the Early Years Facilities and the indicative location size type and details of timings thereof in any Site master planning and development strategies;
- 12.1.4 to include the Early Years Facilities in the relevant Neighbourhood Design Codes and to carry out the Development in accordance with the Neighbourhood Design Codes;
- 12.1.5 prior to submission of the first Reserved Matters Application for the Neighbourhood in which the Early Years Provision is to be located, to submit to and have approved by the County Council a plan identifying the land upon and/or facility in which the Early Years Facility shall be built and details of the number of places to be provided having regard to any reasonable requirements of the County Council including (but not limited to);
- 12.1.6 location within the Land and proximity to local services and local primary school site;
- 12.1.7 the ancillary outdoor space requirements associated with the intended use;
- 12.1.8 vehicular access and parking requirements for the operation of the Early Years Facility,

and the Development shall be carried out in accordance with such plan

- 12.2 The Owner shall within 3 months of Commencement of Development submit to the Education Steering Group and the County Council the Early Years Provision Marketing Plan for comment and approval, such plan shall include:
 - 12.2.1 the indicative locations and details of the size type and timings of the Early Years Facilities on the Land;
 - 12.2.2 provisions for the consultation with the County Council prior to selecting any provider for any of the Early Years Facilities and paying due regard to any representations made or guidance given by the County Council in order to

ensure that the selected operator can deliver high quality sustainable early years education within the Development;

12.2.3 a programme for agreeing with a provider of the Early Years Facilities reasonable commercial terms on which to transfer (whether leasehold or freehold) any Early Years Provision to a provider subject to such transfer containing a restrictive covenant not to allow any use or permit any use of the Early Years Provision save as for its purpose as an Early Years Provision or ancillary community use.

12.3 The Owner shall carry out the Development in accordance with the approved Early Years Provision Marketing Plan.

12.4 The Owner shall market the Early Years Provision in accordance with the approved Early Years Provision Marketing Plan and shall use reasonable endeavours to complete or procure the completion of each Early Years Facility to the standard set out in the Statutory Guidance in force at the time for Early Years Provision and so that it is available for operation from the date the adjacent or nearby primary school opens (if any).

12.5 The Owner covenants with the County Council not to transfer (whether leasehold or freehold or operator or facility management agreement) for any Early Years Provision to a provider of Early Years Facilities unless such transfer contains a restrictive covenant by the provider not to allow any use or permit any use of the Early Years Provision save as for its purpose as an Early Years Provision or ancillary community use.

13 AGREEMENT AND DECLARATION IN RESPECT OF SCHOOL SITES

13.1 The Owner agrees the following provisions in respect of the relevant School Site and covenants as follows:

13.1.1 each School Site is to comprise not less than the hectares set out in clause 1 of this Schedule and shall be Transferred free from contamination and with adequate topsoil and shall for the avoidance of doubt not be within the climate change flood plain as set out in the Environment Agency guidance current at the date of this Deed;

13.1.2 any disagreement or dispute between the Owner and the County Council relating to the terms of the Transfer of the relevant School Site shall be referable by either party to the independent person/expert for determination pursuant to clause 23 of this Deed;

13.1.3 not to dispose of any of the School Sites to any purchaser other than the County Council unless the purchaser has first entered into a deed of covenant with the County Council to observe and perform the obligations contained in this Schedule 2 relating to the transfer of the School Sites mutatis mutandis;

13.1.4 in the event that the Development buildout comes forward faster than the Development timescales envisaged and as a result the County Council provides evidence that temporary primary/secondary school provision is required to meet the need arising from the Development before such time as the relevant School Site is completed then the Owner shall pay to the County Council the cost of such temporary provision within 28 days of written demand (such figure to be determined by the County Council acting reasonably and being the actual cost incurred by providing the temporary provision) save that

this obligation shall cease eighteen (18) months following the School Transfer Date;

13.1.5 if the School Construction Works of the relevant School do not commence on the Northern Primary School Site the Western Primary School Site the District Centre Primary School or the District Centre Secondary School Site (whichever is relevant) within twenty (20) years from the relevant School Transfer Date then:

- (a) the obligations and restrictions upon the Owner in respect of the relevant School Site shall cease to have effect and will no longer apply;
- (b) the County Council covenants that the relevant School Site shall be transferred back to the Owner at nil cost; and
- (c) the County Council covenants that the relevant School Site Contribution shall be repaid to the party who made the contribution together with any interest accrued thereon.

13.1.6 The County Council and its appointed agents and contractors will make good any damage they cause, following the preparation and agreement between parties of a site condition survey undertaken at the point of Transfer of the relevant School Site to the County Council either in the construction of any School within the Development or otherwise to the access road or Services as soon as reasonably practicable after the damage occurs or the County Council are notified of such damage.

13.2 The form of the Transfer shall be agreed as follows:

13.2.1 The Owner shall submit to the County Council for its approval a form of Transfer a minimum of 3 Months (or such other period as may be agreed between the County Council and the Owner) prior to the intended School Transfer Date;

13.2.2 The County Council shall, within 60 Working Days of receiving the form of Transfer pursuant to paragraph 13.2.1 above, provide a response in writing to:

- (a) agree the form of Transfer; or
- (b) refuse the form of Transfer giving reasons for the refusal,

if the County Council refuses the form of transfer or fails to respond in writing within the period prescribed in paragraph 13.2.2 then the Owner shall be entitled to refer the matter to be determined in accordance with clause 23 and such expert shall, for the avoidance of doubt, determine the form of the Transfer and the terms therein.

13.3 In the event that the Development buildout comes forward faster than the Development timescales envisaged and as a result the County Council provides evidence to the Owner that transfer of the primary/secondary School Sites is required to meet the need arising from the Development before the Occupation triggers in paragraphs 10.5 and 10.6 then the Programme shall be amended in accordance with paragraph 2.1.3 and paragraph 13.2 shall apply to such amended Programme.

13.4 not to import or export nor permit importation or exportation of any materials onto or from the relevant School Site at any time without the prior written approval of the County Council.

SCHEDULE 3

Community and Health Facilities

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

- “CCG”** a statutory body established under the Health and Social Care Act 2012 which has the function of commissioning health services for the area in which the Land is located or such other successor body to its powers and at the date of this Deed called the Clinical Commissioning Group;
- “Community Hall”** a main building of not less than 1,800 square metres to be constructed in accordance with a Reserved Matter Approval and the approved District Centre Scheme to be located in the District Centre fronting a public square for Community Use and which shall include space capable of accommodating:
- badminton to be played on a court 17.4m x 9.1 m (including playing area and perimeter space) with a minimum height clearance of 6.7m;
 - bowls to be played on a 14m x 1.8m bowling mat; and
 - facilities for worship;
- “Community Hub”** a building of approximately 180 square metres for Community Use and retail use to be constructed in accordance with a Reserved Matter Approval, which shall unless otherwise agreed with the Borough Council be located as part of the Western Primary School Site or within walking distance of the Western Primary School Site in the approximate location shown on the Welborne Facilities Plan part of which may be made available for Early Years Provision (if agreed between the Borough Council, the County Council and the Owner);
- “Community Use”** a use that falls within Class F.2(b) of the Town and Country Planning (Use Classes) Order 1987;
- “District Centre Scheme”** a scheme for the provision of the District Centre which shall include:
1. a plan identifying the indicative locations of: the Community Hall, the Extra Care Units (as the case may be), the Health and Wellbeing Hub, a day centre; up to 2,800 square metres of food store retail uses (including a main food store of between 1,900 square metres and 2,500 square metres), up to 2,419 of non-food retail uses, and up to 2,571 square metres of comparison retail uses; leisure uses, public realm and residential accommodation, and

2. an indicative programme for the marketing and delivery of each of the uses identified in (1) above (save for Extra Care Units);

and which shall include any revisions, variations or amendments as first approved by the Borough Council;

“Health and Wellbeing Hub”

a building (or part thereof) for the provision of Primary Care and Related Healthcare Services (which may be located within the Community Hall or another building) to meet the needs of the occupants of the Development and to be located in the District Centre and to be constructed in accordance with the approved HWH Scheme of Works and a Reserved Matter Approval;

“Health Steering Group”

a steering group made up of representatives from the Borough Council, the Owner, (upon acceptance of the invitation by the Borough Council) the CCG and such other members as may be added with the full agreement of the Health Steering Group the main purpose of which shall be to discuss and seek agreement on:

- a. the IHF Scheme of Works and the cost and timing of delivery of the Interim Healthcare Facility;
- b. the HWH Scheme of Works and the timing of delivery of the Health and Wellbeing Hub;
- c. the IHF Transfer and the HWH Transfer;
- d. the details and type of Primary Care and Related Healthcare Services in the Interim Healthcare Facility and the Health and Wellbeing Hub; and
- e. the cost of the HWH Scheme of Works having regard to the services at point d;

“HWH Scheme of Works”

a scheme of works for the construction and fitting out of the Health and Wellbeing Hub such scheme to include:

1. a detailed specification suitable to meet the relevant design and construction standards for the services to be provided in the Health and Wellbeing Hub;
2. evidence to demonstrate the anticipated cost of the construction and fitting out of the Health and Wellbeing Hub together with the cost of converting any building to accommodate the Interim Healthcare Facility and the removal of any fitting out and equipment associated with the accommodation of the Interim Health Facility following vacation of the building (but which for the avoidance of doubt excludes land value and the cost of delivering serviced land) to a maximum of

£4,000,000.00 (four million pounds) (Index Linked from March 2017), unless otherwise agreed with the Borough Council following consultation with the Health Steering Group; and

confirmation as to whether the Health and Wellbeing Hub is to be co-located with the Community Hall or provided as a stand-alone building;

- “HWH Transfer”** the transfer of the freehold or the grant of a lease or tenancy of the Health and Wellbeing Hub from the Owner to an Operator on such terms so as to reasonably enable the Operator to provide the services within the Health and Wellbeing Hub for the population of the Development;
- “IHF Scheme of Works”** a scheme of works to accommodate the Interim Healthcare Facility and the removal of any fitting out and equipment associated with the accommodation of the Interim Health Facility following vacation of the building;
- “IHF Transfer”** the grant of a lease or tenancy of the Interim Healthcare Facility from the Owner to an Operator on such terms so as to reasonably enable the Operator to provide the services within the Interim Healthcare Facility until such time as the Health and Wellbeing Hub is open to the public in accordance with paragraph 6.3.3 below;
- “Interim Healthcare Facility”** an interim solution for provision of healthcare infrastructure within the Village Centre of a suitable design, and scale to accommodate Primary Care and Related Healthcare Services to meet the needs of the occupants of the Development and which shall be made available for use for the provision of health services by an Operator until the Health and Wellbeing Hub has opened, to be constructed in accordance with a Reserved Matter Approval;
- “Operator”** a provider or providers of Primary Care and Related Healthcare Services, whether an NHS Trust or other legal entity nominated by the CCG, or such other body or bodies as first agreed with the Borough Council acting in its sole discretion following consultation with the Health Steering Group;
- “Primary Care and Related Healthcare Services”** primary care services provided by an Operator providing the first point of contact in the healthcare system and acting as the ‘front door’ of the NHS which may include general practice doctors, community pharmacy (but for the avoidance of doubt not a commercial dispensing chemist), dental, and optometry (eye health) services (but for the avoidance of doubt not a commercial dispensing optician) and other related services or such similar services as first agreed with the Borough Council acting in its absolute discretion following consultation with the Health Steering Group;

“Village Centre”	the village centre identified on the Land Use Plan and for the avoidance of doubt located in the northern half of the Application Site;
“Village Centre Scheme”	<p>a scheme for the provision of the Village Centre which shall include:</p> <ol style="list-style-type: none"> 1. a plan identifying the indicative locations of: the Village Community Space, the Interim Healthcare Facility; a day care and pre-school centre, indoor sports provision, up to 400 square metres of food store retail uses, up to 1,081 square metres of non-food retail uses, up to 390 square metres of use-class A4 retail uses and up to 339 square metres of comparison retail uses, parking and public realm provision, and residential accommodation; and 2. an indicative programme for the marketing and delivery of each of the uses identified in (1) above including Early Years Provision if agreed between the County Council, the Owner and the Borough Council; <p>and which shall include any revisions, variations or amendments as first approved by the Borough Council;</p>
“Village Community Space”	a space for use by the community of not less than 500 square metres to be constructed in accordance with a Reserved Matter Approval and to be located within the Village Centre and which may include (in addition to the not less than 500 square metres space) the Interim Healthcare Facility and the Early Years Provision (if agreed between the Borough Council, the County Council and the Owner);

2 VILLAGE CENTRE

- 2.1 The Owner shall not Commence Development in the Village Centre nor Occupy more than 210 Residential Units unless the Village Centre Scheme has been submitted to and approved by the Borough Council, following consultation with the Health Steering Group (insofar as it relates to the Interim Healthcare Facility).
- 2.2 The Owner shall not Occupy more than 690 Residential Units until:
- 2.2.1 the Village Community Space has been Practically Completed to the satisfaction of the Borough Council in accordance with the approved Village Centre Scheme;
 - 2.2.2 the Borough Council has approved the form of a Long Lease in respect of the Village Community Space;
 - 2.2.3 (following the satisfaction of each of paragraphs 2.2.1 – 2.2.2 above) the Village Community Space has been opened and made available to the public for Community Use.

- 2.3 The Owner shall not use the Village Community Space for any purpose other than for Community Use.
- 2.4 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Village Community Space within 10 days of its issue and shall thereafter maintain the Village Community Space in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Village Community Space.
- 2.5 The Owner shall not Occupy more than 5,000 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Village Community Space.
- 2.6 The Owner shall construct and market the Village Centre in accordance with the approved Village Centre Scheme.

3 DISTRICT CENTRE

- 3.1 The Owner shall not Occupy more than 3,000 Residential Units unless the District Centre Scheme has been submitted to and approved by the Borough Council, following consultation with the Health Steering Group (insofar as it relates to the Health and Wellbeing Hub).
- 3.2 The Owner shall not Occupy more than 3,600 Residential Units until:
 - 3.2.1 the Community Hall has been Practically Completed to the satisfaction of the Borough Council in accordance with the approved District Centre Scheme;
 - 3.2.2 the Borough Council has approved the form of Long Lease in respect of the Community Hall;
 - 3.2.3 (following the satisfaction of each of paragraphs 3.2.1 – 3.2.2 above) the Community Hall has been opened and made available to the public for Community Use.
- 3.3 The Owner shall not use the Community Hall for any purpose other than for Community Use.
- 3.4 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Community Hall within 10 days of its issue and shall thereafter maintain the Community Hall in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Community Hall.
- 3.5 The Owner shall not Occupy more than 5,000 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Community Hall.
- 3.6 The Owner shall construct and market the District Centre in accordance with the approved District Centre Scheme.

4 HEALTH STEERING GROUP

- 4.1 The Owner shall not Commence Development of any Residential Unit unless the terms of reference of the Health Steering Group have been submitted to and approved by the Borough Council, following consultation with the CCG, and the first meeting of the Health Steering Group has been held.

- 4.2 The terms of reference of the Health Steering Group shall provide that the representatives participating in the Health Steering Group shall act reasonably at all times.
- 4.3 The Owner and the Borough Council shall participate in the Health Steering Group in accordance with the approved terms of reference.
- 4.4 As soon as reasonably practicable following receipt of the draft terms of reference in accordance with paragraph 4.1 above, the Borough Council shall seek the views of the CCG in respect of the draft terms of reference and at the same time shall invite the CCG to join the Health Steering Group.
- 4.5 The Borough Council shall give due consideration to the reasonable and proper views and representations of the Owner and the Health Steering Group on all matters where consultation is required under this Schedule 4 but the Borough Council's decision in complying with its requirements in accordance with this Schedule 4 shall be final.

5 INTERIM HEALTHCARE FACILITY

5.1 Following

- 5.1.1 the Practical Completion of 1,000 Residential Units and prior to the Practical Completion of 1,250 Residential Units (or such other numbers of Residential Units as the Borough Council following consultation with the Health Steering Group may notify the Owner in writing), and
- 5.1.2 receipt of notice of the details and type of Primary Care and Related Healthcare Services to be provided at the Interim Healthcare Facility from the Borough Council following consultation with the Health Steering Group;

the Owner shall:

- 5.1.3 submit the draft IHF Scheme of Works to the Borough Council for its approval following consultation with the Health Steering Group; and
- 5.1.4 submit the draft IHF Transfer to the Borough Council for its approval (such approval for the avoidance of doubt shall be at the Borough Council's absolute discretion) following consultation with the Health Steering Group.

5.2 The Owner shall not Occupy more than 1,250 Residential Units (or such other number of Residential Units as the Borough Council following consultation with the Health Steering Group may notify the Owner in writing) until:

- 5.2.1 the IHF Scheme of Works has been submitted to and approved by the Borough Council following consultation with the Health Steering Group; and
- 5.2.2 the draft IHF Transfer has been submitted to and approved by the Borough Council (such approval for the avoidance of doubt shall be at the Borough Council's absolute discretion) following consultation with the Health Steering Group.

5.3 The Owner shall not Occupy more than 2,000 Residential Units (or such other number of Residential Units as the Borough Council following consultation with the Health Steering Group may notify the Owner in writing) until:

- 5.3.1 the Interim Healthcare Facility has been Practically Completed to the satisfaction of the Borough Council in accordance with the approved IHF Scheme of Works;

5.3.2 the IHF Transfer has been entered into; and

5.3.3 (following the satisfaction of each of paragraphs 5.3.1 – 5.3.2 above) the Interim Healthcare Facility has been opened and made available to the public.

5.4 The Owner shall not use the Interim Healthcare Facility for any purpose other than for services related to health and wellbeing unless otherwise first agreed by the Borough Council.

5.5 The obligations in this paragraph 5 shall cease to have effect upon the opening of the Health and Wellbeing Hub (in accordance with paragraph 6 below) and the Owner shall be entitled to utilise such floorspace comprised in the Interim Healthcare Facility for other purposes (subject to obtaining the necessary planning permission).

5.6 The obligations in this paragraph 5 shall not apply if prior to the Occupation of 1,250 Residential Units the Borough Council following consultation with the Health Steering Group notifies the Owner in writing that the Interim Healthcare Facility is no longer required.

6 HEALTH AND WELLBEING HUB

6.1 Following

6.1.1 the Practical Completion of 2,500 Residential Units and prior to the Practical Completion of 2,750 Residential Units (or such other numbers of Residential Units as the Borough Council following consultation with the Health Steering Group may notify the Owner in writing; and

6.1.2 receipt of notice of the details and type of Primary Care and Related Healthcare Services to be provided at the Health and Wellbeing Hub from the Borough Council following consultation with the Health Steering Group;

the Owner shall:

6.1.3 submit the draft HWH Scheme of Works to the Borough Council for its approval following consultation with the Health Steering Group; and

6.1.4 submit the draft HWH Transfer to the Borough Council for its approval (such approval for the avoidance of doubt shall be at the Borough Council's absolute discretion) following consultation with the Health Steering Group.

6.2 The Owner shall not Occupy 2,750 Residential Units (or such other number of Residential Units as the Borough Council following consultation with the Health Steering Group may notify the Owner in writing, which shall in any event not be lower than 1,500 provided such notice is given prior to the Practical Completion of 1,250 Residential Units) until:

6.2.1 the HWH Scheme of Works has been submitted to and approved by the Borough Council following consultation with the Health Steering Group; and

6.2.2 the HWH Transfer has been submitted to and approved by the Borough Council (such approval for the avoidance of doubt shall be at the Borough Council's absolute discretion) following consultation with the Health Steering Group.

6.3 The Owner shall not Occupy more than 3,500 Residential Units (or such other number of Residential Units as the Borough Council following consultation with the Health Steering Group may notify the Owner in writing, which shall in any event not be lower than 2,000 provided such notice is given prior to the Practical Completion of 1,250 Residential Units) until:

- 6.3.1 the Health and Wellbeing Hub has been Practically Completed to the satisfaction of the Borough Council in accordance with the approved HWH Scheme of Works;
 - 6.3.2 the HWH Transfer has been entered into; and
 - 6.3.3 (following the satisfaction of each of paragraphs 6.3.1 – 6.3.2 above) the Health and Wellbeing Hub has been opened and made available to the public.
- 6.4 The Owner shall not Use the Health and Wellbeing Hub for any purpose other than for services related to health and wellbeing unless otherwise first agreed by the Borough Council.

7 COMMUNITY HUB

- 7.1 The Owner shall not Occupy 5,000 Residential Units until:
- 7.1.1 the Community Hub has been Practically Completed to the satisfaction of the Borough Council;
 - 7.1.2 the Borough Council has approved the form of Long Lease in respect of the Community Hub;
 - 7.1.3 (following the satisfaction of each of paragraphs 7.1.1 – 7.1.2 above) the Community Hub has been opened and made available to the public for Community Use and retail.
- 7.2 The Owner shall not use the Community Hub for any purpose other than for Community Use.
- 7.3 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Community Hub within 10 days of its issue and shall thereafter maintain the Community Hub in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Community Hub.
- 7.4 The Owner shall not Occupy more than 5,000 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Community Hub.

SCHEDULE 4

Leisure/Recreation/Public Space

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

- “Artificial Pitch”** an all-weather playing pitch for multiple sports with a principal playing area of not less than 106m x 70m plus suitable space for a perimeter path, fencing and any necessary storage space for maintenance equipment. The synthetic playing surface will be suitable for the primary sport to be played on the pitch;
- “Cricket Pitch”** an adult cricket pitch of not less than 111.56m x 128.04m with associated accessible changing and toilet facilities and parking (with a total area of not less than 2.88 hectares) to be constructed in accordance with a Reserved Matter Approval and the plan to be submitted in order to discharge Condition 55 of the Permission on the area of land coloured blue on the Welborne Facilities Plan;
- “Dashwood Park”** the area coloured purple on the Welborne Facilities Plan;
- “First Long Stop Percentage”** a percentage of Residential Units comprised in a Neighbourhood in which a Play Area and/or Public Space shall be delivered;
- “Multi-Use Games Area”** an area of not less than 37m x 18.5m designed to comply with the Sport England requirements for multi-use games area to be designed and constructed in accordance with a Reserved Matter Approval;
- “Play Area”** a play area identified in the Open Space and Play Space Strategy of the Strategic Design Codes submitted to and approved by the Borough Council pursuant to condition 40 of the Permission and constructed in accordance with a Reserved Matter Approval;
- “Play Area Charge”** a legal charge over a Play Area comprised in a Reserved Matter Application Area granted in favour of the Freehold Owner allowing the Freehold Owner to enter onto the Play Area to comply with the Estate Management Strategy in the event the Estate Management Company fails to comply with a Default Notice (served in accordance with paragraph 7 of Schedule 1) and allowing the Freehold Owner to take possession and/or exercise a power of sale of the Play Area in the event that the Estate Management Company becomes insolvent or otherwise ceases to operate;

“Play Area and Public Space Delivery Timetable”	a timetable for the delivery of a Play Area and/or Public Space in a Neighbourhood which sets out the First Long Stop Percentage and the Second-Long Stop Percentage;
“Public Space”	those areas or parts of the Development not set out in this Schedule 4 that comprise the public accessible areas including but not limited to public realm, public art, Semi-natural Greenspace, non-adopted estate roads, parking areas, street furniture, and trees;
“Public Space Charge”	a legal charge over each area(s) of Public Space comprised in a Reserved Matter Application Area granted in favour of the Freehold Owner allowing the Freehold Owner to enter onto the Public Space to comply with the Estate Management Strategy in the event the Estate Management Company fails to comply with a Default Notice (served in accordance with paragraph 7 of Schedule 1) and allowing the Freehold Owner to take possession and/or exercise a power of sale of the Public Space in the event that the Estate Management Company becomes insolvent or otherwise ceases to operate;
“Second Long Stop Percentage”	a percentage of Residential Units comprised in a Neighbourhood in which the Owner and the Estate Management Company must have transferred the freehold or entered into the approved form of Long Lease in respect of a Play Area;
“Semi-natural Greenspace”	accessible green space which is natural and enhances natural features and conserves biodiversity constructed and laid out in accordance with a Reserved Matter Approval;
“Sports Building”	a sports building to provide appropriate facilities to serve the sports and recreation offer at the Welborne Sports Hub which shall include accessible toilet and changing facilities to be constructed in accordance with a Reserved Matter Approval;
“Temporary Park”	a temporary park for use as temporary public open space to be constructed and laid out in accordance with details approved by the Borough Council pursuant to condition 50 of the Permission and located on part of the area of land where the Welborne Park will be provided;
“Tennis Court”	a tennis court with a principal play area of not less than 23.77m x 10.97m constructed in accordance with a Reserved Matter Approval;
“Welborne Park”	a park for use as public open space coloured orange on the Welborne Facilities Plan to be constructed and laid out in accordance with a Reserved Matter Approval.

- 2.1 The Owner shall not Occupy more than 4,500 Residential Units until:
- 2.1.1 the Welborne Park has been Practically Completed to the satisfaction of the Borough Council;
 - 2.1.2 the Borough Council has approved the form of Long Lease in respect of the Welborne Park;
 - 2.1.3 (following the satisfaction of each of paragraphs 2.1.1 - 2.1.2 above) the Welborne Park has been opened and made available to the public for public open space.
- 2.2 The Owner shall not Use the Welborne Park for any purpose other than for public open space.
- 2.3 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Welborne Park within 10 days of its issue and shall thereafter maintain the Welborne Park in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Welborne Park.
- 2.4 The Owner shall not Occupy more than 5,400 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Welborne Park.

3 TEMPORARY PARK

- 3.1 The Owner shall not Occupy more than 1,500 Residential Units until the details for the delivery of a Temporary Park have been approved pursuant to condition 50 of the Permission (such details to identify and include the means by which the Temporary Park will relate to and serve the public open space requirements of those Neighbourhoods situated or to be situated adjacent to the Temporary Park).
- 3.2 The Owner shall not Occupy more than 50% of the Residential Units in any Neighbourhood which is adjacent to the location of the Temporary Park unless that part of the Temporary Park that is located adjacent to the same Neighbourhood has been Practically Completed to the Borough Council's satisfaction.
- 3.3 The Owner shall maintain the Temporary Park for use as public open space until Practical Completion of the Welborne Park.
- 3.4 The obligations in this paragraph 3 above shall cease to apply upon the Practical Completion of the Welborne Park.

4 ALLOTMENTS

- 4.1 The Owner shall not Occupy more than 3,500 Residential Units until:
- 4.1.1 the Allotments have been Practically Completed to the satisfaction of the Borough Council;
 - 4.1.2 the Borough Council has approved the form of Long Lease in respect of the Allotments;
 - 4.1.3 (following the satisfaction of each of paragraphs 4.1.1 and 4.1.2 above) the Allotments have been opened and made available to the public for the growth

of food and other plants in accordance with the details submitted to and approved by the Borough Council pursuant to condition 53 of the Permission.

- 4.2 The Owner shall not Use the Allotments for any purpose other than for use as allotments.
- 4.3 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Allotments within 10 days of its issue and shall thereafter maintain the Allotments in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Allotments.
- 4.4 The Owner shall not Occupy more than 4,400 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Allotments.

5 WELBORNE SPORTS HUB

- 5.1 The Owner shall not Occupy more than 3,360 Residential Units until:
 - 5.1.1 the Welborne Sports Hub has been Practically Completed to the satisfaction of the Borough Council;
 - 5.1.2 the Borough Council has approved the form of Long Lease in respect of the Welborne Sports Hub;
 - 5.1.3 (following the satisfaction of each of paragraphs 5.1.1 - 5.1.2 above) the Welborne Sports Hub has been opened and made available to the public for sports and recreation.
- 5.2 The Owner shall not Use the Welborne Sports Hub for any purpose other than for sports and recreation.
- 5.3 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Welborne Sports Hub within 10 days of its issue and shall thereafter maintain the Welborne Sports Hub in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Welborne Sports Hub.
- 5.4 The Owner shall not Occupy more than 4,260 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Welborne Sports Hub.

6 CRICKET PITCH

- 6.1 The Owner shall not Occupy more than 3,360 Residential Units nor 50% of the Residential Units in the Neighbourhood which includes the Cricket Pitch , whichever is the earlier, until:
 - 6.1.1 the Cricket Pitch has been Practically Completed to the satisfaction of the Borough Council;
 - 6.1.2 the Borough Council has approved the form of Long Lease in respect of the Cricket Pitch;

6.1.3 (following the satisfaction of each of paragraphs 6.1.1 - 6.1.2 above) the Cricket Pitch has been opened and made available to the public for sports and recreation.

6.2 The Owner shall not Use the Cricket Pitch for any purpose other than for sports and recreation.

6.3 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Cricket Pitch within 10 days of its issue and shall thereafter maintain the Cricket Pitch in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Cricket Pitch.

6.4 The Owner shall not Occupy more than 4,260 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Cricket Pitch.

7 DASHWOOD PARK

7.1 The Owner shall not Occupy more than 1,510 Residential Units until:

7.1.1 Dashwood Park (with two Tennis Courts) has been Practically Completed to the satisfaction of the Borough Council;

7.1.2 the Borough Council has approved the form of Long Lease in respect Dashwood Park;

7.1.3 (following the satisfaction of each of paragraphs 7.1.1 and 7.1.2 above) Dashwood Park has been opened and made available to the public for sports and recreation.

7.2 The Owner shall not use Dashwood Park for any purpose other than for sports and recreation.

7.3 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of Dashwood Park within 10 days of its issue and shall thereafter maintain Dashwood Park in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of Dashwood Park.

7.4 The Owner shall not Occupy more than 2,410 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of Dashwood Park.

8 PLAY AREAS

8.1 The Owner shall not Occupy any Residential Units comprised in a Neighbourhood in which a Play Area or Public Space will be located until the Play Area and Public Space Delivery Timetable for that Neighbourhood has been submitted to and agreed in writing with the Borough Council.

8.2 The Owner shall deliver the Play Area in accordance with the approved Play Area and Public Space Delivery Timetable.

8.3 The Owner shall not Occupy more than the First Long Stop Percentage of Residential Units comprised in a Neighbourhood in which a Play Area will be located unless:

- 8.3.1 the Play Area has been Practically Completed to the satisfaction of the Borough Council;
 - 8.3.2 the Borough Council has approved the form of Long Lease or Freehold Transfer and the Play Area Charge in respect of the Play Area;
 - 8.3.3 (following the satisfaction of each of paragraphs 8.3.1 and 8.3.2 above) the Play Area has been opened and made available to the public for sports and recreation.
- 8.4 The Owner shall not use any Play Area for any purpose other than for sports and recreation.
- 8.5 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of any Play Area within 10 days of its issue and shall thereafter maintain that Play Area in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease or completed the approved form of Freehold Transfer (as applicable) in respect of that Play Area.
- 8.6 The Owner shall not Occupy more than the Second Long Stop Percentage of Residential Units comprised in a Neighbourhood in which a Play Area will be located unless and until:
- 8.6.1 the Freehold Owner and the Estate Management Company have completed the approved form of Freehold Transfer of the Play Area; and
 - 8.6.2 the Freehold Owner and the Estate Management Company have completed the registration of the Play Area Charge at HM Land Registry; or
 - 8.6.3 the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Play Area.

9 PUBLIC SPACE

- 9.1 The Owner shall not Occupy more than the First Long Stop Percentage of the Residential Units comprised in a Reserved Matters Application Area in which Public Space will be located until:
- 9.1.1 the Public Space has been Practically Completed to the satisfaction of the Borough Council;
 - 9.1.2 the Borough Council has approved the form of Freehold Transfer and the Public Space Charge or a Long Lease in respect of the Public Space;
 - 9.1.3 (following the satisfaction of each of paragraphs 9.1.1 and 9.1.2 above) the Public Space has been opened and made available to the public.
- 9.2 The Owner shall not use the Public Space for any purpose other than for public open space.
- 9.3 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Public Space within 10 days of its issue and shall thereafter maintain that Public Space in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Owner and the Estate Management Company have entered into the approved form of Long Lease or completed the Freehold Transfer (as applicable) in respect of that Public Space.

9.4 The Owner shall not Occupy more than 95% of the Residential Units comprised in a Reserved Matters Application Area (or such other later period as may be agreed in writing between the Owner and the Borough Council) in which a Public Space will be located unless and until:

- 9.4.1 the Owner and the Estate Management Company have completed the Freehold Transfer of the Public Space; and
- 9.4.2 the Freehold Owner and the Estate Management Company have completed the registration of the Public Space Charge at HM Land Registry; or
- 9.4.3 the Freehold Owner has granted the Long Lease in respect of the Public Space.

SCHEDULE 5

SANGS & SPA mitigation

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“Bird Aware Contribution”	<p>a contribution to be expended by the Borough Council on the Solent Recreation Mitigation Strategy to be calculated for each Reserved Matter Application Area based on the number and type of Residential Units as detailed in the relevant Reserved Matter Application which shall be calculated using the following formula:</p> <p>The contribution shall be a sum equal to 49.7% of the total sum of the following (in each case Index Linked):</p> <ul style="list-style-type: none">• £356 for each 1 bedroom Residential Unit in the Reserved Matter Application Area• £514 for each 2 bedroom Residential Unit in the Reserved Matter Application Area• £671 for each 3 bedroom Residential Unit in the Reserved Matter Application Area• £789 for each 4 bedroom Residential Unit in the Reserved Matter Application Area• £927 for each Residential Unit with 5 bedrooms or more in the Reserved Matter Application Area
“Dashwood”	<p>that part of the SANGS Land that is shown edged red on the SANGS Drawings entitled “Dashwood SANG Masterplan”;</p>
“Dashwood Planning Permission”	<p>the planning permission granted by Winchester City Council reference number 17/01607/FUL or such other scheme approved by both Winchester City Council and the Borough Council that provides for such routes and facilities as are necessary to allow for use of Dashwood as SANGS</p>
“Fareham Common”	<p>that part of the SANGS Land to be laid out in accordance with a Reserved Matter Approval and shown edged red on the SANGS Drawings entitled “Fareham Common SANG Masterplan with additional SANG”;</p>
“SANGS”	<p>Suitable Alternative Natural Green Space;</p>
“SANGS Drawings”	<p>the drawings appended to this Deed at Appendix 20 and labelled:</p>

- SANG-001.1 Rev 3 (Fareham Common SANG Masterplan with additional SANG)
- SANG-002.1.1 Rev 5 (Welborne Mile SANG Masterplan – Sheet 01);
- SANG-002.2 Rev 1 (Welborne Mile SANG Masterplan Sheet 02)
- SANG-003 Rev 11 (Dashwood SANG Masterplan)

or such other drawings as may be agreed in writing between the Owner and the Borough Council;

“SANGS Land”

the areas of land to be provided as SANGS comprising:

- Dashwood;
- Fareham Common; and
- the Welborne Mile;

“SANGS Management Plan”

a management plan detailing the management and maintenance of the SANGS Land substantially in accordance with chapter 6 of the SANG Management Plan dated July 2019 and submitted with the Application and which shall include provisions for the review and subsequent approval of any revisions arising from such review by the Borough Council;

“Solent Recreation Mitigation Strategy”

the Solent Recreation Mitigation Strategy published December 2017 (or such amended or replaced version published from time to time)

“Welborne Mile”

that part of the SANGS Land to be laid out in accordance with a Reserved Matter Approval and shown edged red on the SANGS Drawings entitled “Welborne Mile SANG Masterplan Sheet 01 and Welborne Mile SANG Masterplan Sheet 02”.

2 SANGS Delivery

2.1 The Owner shall not Occupy any Residential Unit until:

- 2.1.1 Dashwood has been Practically Completed in accordance with the Dashwood Planning Permission to satisfaction of the Borough Council;
- 2.1.2 the Borough Council has approved the form of Long Lease in respect of Dashwood;
- 2.1.3 (following the satisfaction of each of paragraphs 2.1.1 and 2.1.2 above) Dashwood has been opened and made available to the public for use as SANGS.

2.2 The Owner shall not Use Dashwood for any purpose other than for SANGS.

- 2.3 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of Dashwood within 10 days of its issue and shall thereafter maintain Dashwood in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Dashwood.
- 2.4 The Owner shall not Occupy more than 900 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of Dashwood.
- 2.5 The Owner shall not Occupy more than 3,600 Residential Units until:
 - 2.5.1 Welborne Mile has been Practically Completed to the satisfaction of the Borough Council;
 - 2.5.2 the Borough Council has approved the form of Long Lease in respect of Welborne Mile;
 - 2.5.3 Welborne Mile has been opened and made available to the public for use as SANGS.
- 2.6 The Owner shall not Use the Welborne Mile for any purpose other than for SANGS.
- 2.7 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of the Welborne Mile within 10 days of its issue and shall thereafter maintain the Welborne Mile in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Welborne Mile.
- 2.8 The Owner shall not Occupy more than 4,500 Residential Units until the Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of the Welborne Mile.
- 2.9 The Owner shall not Occupy more than 5,100 Residential Units until:
 - 2.9.1 Fareham Common has been Practically Completed to the satisfaction of the Borough Council;
 - 2.9.2 the Borough Council has approved the form of Long Lease in respect of Fareham Common;
 - 2.9.3 Fareham Common has been opened and made available to the public for use as SANGS.
- 2.10 The Owner shall not use Fareham Common for any purpose other than for SANGS.
- 2.11 The Owner shall provide the Borough Council with a copy of the Certificate of Maintenance in respect of Fareham Common within 10 days of its issue and shall thereafter maintain Fareham Common in accordance with the requirements and/or standards described in the Certificate of Maintenance until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of Fareham Common.
- 2.12 The Owner shall not Occupy more than 5,750 Residential Units until the Freehold Owner and the Estate Management Company have entered into the approved form of Long Lease in respect of Fareham Common.

3 USE AND MANAGEMENT OF SANGS

- 3.1 The Owner shall not Occupy any Residential Unit until the SANGS Management Plan has been submitted to and approved by the Borough Council.
- 3.2 The Owner (and the Estate Management Company during the term of the applicable Long Lease) shall:
 - 3.2.1 manage and maintain the SANGS Land at the Welborne Mile and Fareham Common in accordance with the approved SANGS Management Plan.
 - 3.2.2 carry out such works of management and maintenance on the SANGS Land at Dashwood in accordance with the approved SANGS Management Plan.
- 3.3 The Owner shall not Occupy any Residential Unit unless it has delivered (and released for completion) to Winchester City Council a duly executed Unilateral Undertaking substantially in the form of that at Appendix 8.

4 BIRD AWARE CONTRIBUTION

- 4.1 The Owner shall pay the Bird Aware Contribution to the Borough Council prior to the Occupation of any Residential Units within each Reserved Matter Application Area.
- 4.2 The Owner shall not Occupy any Residential Unit in any Reserved Matter Application Area unless and until the Bird Aware Contribution for that Reserved Matter Application Area has been paid to the Borough Council.

SCHEDULE 6

Public Transport

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“Annual Bus Operating Costs”	the sum of monies to be paid by the Owner to the bus operator annually to cover all costs for operation and delivery of the Bus Service as required by the bus operator per annum and for the avoidance of doubt the Annual Bus Operating Costs are to be paid by the Owner in addition to the Bus Service Initial Cash Deposit and the Bus Service Second Cash Deposit and the Annual Bus Balancing Payment (all of which are to be paid by the Owner to the County Council in accordance with the provisions of this Schedule);
“Annual Bus Balancing Payment”	the sum of money which is the difference between the Bus Service Cash Deposit Liability and the Annual Report Figure and this sum of money will either be paid by the Owner to the County Council or paid by the County Council to the Owner in accordance with the provisions of this Schedule and for the avoidance of doubt any sums paid by the Owner to the County Council will form part of the Bus Service Cash Deposit Liability aggregate;
“Annual Report”	<p>a report which will include but not be limited to the following details:</p> <ul style="list-style-type: none">(a) a forecast of the operating costs required for the Bus Service for the following 3 years from the date of the Annual Report;(b) details of the revenue generated by the Bus Service for the preceding 12 months from the date of the previous Annual Report (if any); and(c) evidence of payment; and(d) value of the Annual Bus Operating Costs;(e) and the County Council will determine the Annual Report Figure and “Annual Reports” shall be construed accordingly
“Annual Report Figure”	the sum of money that is the subsidy required to operate the Bus Service for the following 3 years from the date of the relevant Annual Report such figure to be determined by the County Council (in its absolute discretion) following the review of the relevant Annual Report
“Bus Infrastructure”	bus infrastructure including but not limited to bus priority measures, bus stops, shelters, bus information displays

and any other infrastructure required for the provision of the Bus Service as determined by the County Council and may delivered on a phased basis pursuant to the Reserved Matters Approval;

“Bus Service”

the provision of a new publicly available bus service or services to operate between the Site and Fareham Rail Station and Fareham Bus Station for the benefit of the Site in accordance with the Public Transport Strategy and the route of such service or services may be provided on a phased basis pursuant to the relevant Reserved Matters Approval and such service or services shall utilise buses which are publicly accessible and compliant with the Equality Act 2010 and further the buses within the Bus Service are no older than 5 years at the time of being brought into service and “Bus Services” shall be construed accordingly;

“Bus Service Cash Deposit Liability”

the initial minimum sum of money namely £1,280,000 (one million two hundred and eighty thousand pounds) paid by the Owner to the County Council in accordance with the provisions of this Schedule made up of:

- (a) the Bus Service Initial Cash Deposit and;
- (b) thereafter the Bus Service Second Deposit

such sum to be towards the cost of implementation and compliance with the targets and/or measures and/or delivery of the Bus Service and following the review of the Annual Report (in accordance with the Annual Bus Balancing Payment provisions) the value of the Bus Service Cash Deposit Liability shall be updated by adding the Annual Bus Balancing Payment to the Subsequent Bus Service Cash Deposit Liability

“Bus Service Initial Cash Deposit”

the sum of £1,120,000 (one million one hundred and twenty thousand pounds) being the cash deposit paid by the Owner to the County Council towards the cost of implementation and compliance with the targets and/or measures and delivery of the Bus Service such sum to be paid in accordance with the provisions of this Schedule;

“Bus Service Second Cash Deposit”

the additional payment of £160,000 (one hundred and sixty thousand pounds) being the cash deposit paid by the Owner to the County Council towards the cost of implementation and compliance with the targets and/or measures and delivery of the Bus Service such sum to be paid in accordance with the provisions of this Schedule;

“Bus Service Default Notice”

a notice issued by the County Council in accordance with the provisions of this Schedule;

“Public Transport Strategy”	the document produced by WSP dated December 2018 as agreed by the County Council attached to this Deed as Appendix 9;
“Reserved Matters Application Area”	has the same meaning as in clause 1 of this Deed;
“Reserved Matters Application”	has the same meaning as in clause 1 of this Deed;
“Reserved Matters Approval”	has the same meaning as in clause 1 of this Deed;
“Knowle Rail Halt”	a new rail halt to be provided on the Knowle Rail Halt Land;
“Knowle Rail Halt Land”	the land shown for identification purposes on the Land Use Plan;
“Knowle Rail Halt Transfer Request”	written notice requesting the transfer of the Knowle Rail Halt Land made by the Borough Council or a party nominated by the Borough Council.
“Neighbourhood”	has the same meaning as in clause 1 of this Deed
“Subsequent Bus Service Cash Deposit Liability”	the updated and current value of the Bus Service Cash Deposit Liability which is current at the submission of the second Annual Report and thereafter the updated and current value of the Bus Service Cash Deposit Liability which is current at the submission of all subsequent Annual Reports such value which may or may not be greater than £1,280,000 (one million two hundred and eighty thousand pounds) over the course of the Development of the Land

2 BUS INFRASTRUCTURE

The Owner covenants:

- 2.1 not to Commence or permit Commencement of Development within a Reserved Matters Application Area within any Neighbourhood until it has identified the Bus Infrastructure that is necessary and required by the County Council for the Bus Service in such Reserved Matters Application Area within any Neighbourhood and in accordance with the Public Transport Strategy; and
- 2.2 the Reserved Matters Application made pursuant to paragraph 2.1 will provide a programme for the delivery of the Bus Infrastructure linked to the delivery of the Residential Units for such Reserved Matters Application as approved and agreed in writing with County Council; and
- 2.3 not to Occupy the relevant number of Residential Units within the Development as set out in the programme for delivery approved pursuant to paragraph 2.2 unless and until the Owner has complied with the relevant Reserved Matters Approval to be granted pursuant to the Reserved Matters Application made in accordance with paragraph 2.1 and the programme of delivery approved pursuant to paragraph 2.2 to the written satisfaction of the County Council;

- 2.4 in the event the Owner requires an amendment to the route of the Bus Service the Owner shall submit a further Reserved Matters Application that identifies the Bus Infrastructure that is necessary and required by the County Council for such Bus Service and paragraphs 2.1 and 2.2 and 2.3 of this Schedule shall apply to such amended route and no further Residential Units shall be Occupied within the Development unless and until the Reserved Matters Application made pursuant to this paragraph is submitted and the Owner has complied on the same terms as paragraphs 2.2 and 2.3 and 2.4.

3 BUS SERVICE

Bus Service Operation

3.1 The Owner covenants:

- 3.1.1 to submit details of the Bus Service to the County Council for its written approval prior to the Occupation of 100 Residential Units within the Development and;
 - 3.1.2 not to Occupy or permit Occupation of more than 100 Residential Units within the Development unless and until details of the Bus Service have been submitted to the County Council for its written approval
 - 3.1.3 prior to the Occupation of 210 Residential Units within the Development to procure the delivery and the operation of the Bus Service for the benefit of the Site in accordance with the details approved pursuant to paragraph 3.1.1 and 3.1.2 and The Public Transport Strategy; and
 - 3.1.4 Prior to the Occupation of 210 Residential Units to make the first payment of the Annual Bus Operating Costs in full and;
 - 3.1.5 not to Occupy more than 210 Residential Units unless it has made the first payment of the Annual Bus Operating Costs in full
 - 3.1.6 not to Occupy or permit Occupation of more than 210 Residential Units unless and until the Bus Service has been procured and maintained and operational for the benefit of the Site in accordance with the details approved pursuant to paragraph 3.1.1 and 3.1.2 and the Public Transport Strategy;
 - 3.1.7 to monitor the frequency of the Bus Service on the first anniversary of the Occupation of 210th Residential Unit and every annual anniversary thereafter following its implementation in order to assess whether the Bus Service provisions should be increased or decreased or altered in any way to facilitate delivery of the Bus Service and further the Owner covenants to provide the County Council with written details of such review ("the Annual Review") and any proposed changes as a result of the Annual Review PROVIDED THAT any such proposals required as a result of the Annual Review shall not be implemented unless and until the County Council has provided prior written approval;
- 3.2 The Owner shall continue to procure and maintain the operation of the Bus Service (in accordance with the details approved pursuant to paragraph 3.1.1 and The Public Transport Strategy unless otherwise agreed in writing with the County Council) and continue to pay the Annual Bus Operating Costs until the earlier of the following occurrences:

- 3.2.1 the date on which the County Council determines in its absolute discretion and provides written approval of its decision that the Bus Service can run viably without any further payment of the Annual Bus Operating Costs or;
- 3.2.2 up to and including three months from final Occupation of any Residential Unit within the Development

Bus Service Funding

3.3 The Owner covenants:

- 3.3.1 To pay the Bus Service Initial Cash Deposit prior to the Occupation of 210 Residential Units and not to Occupy or permit Occupation of more than 210 Residential Units unless and until the Bus Service Initial Cash Deposit is paid in full to the County Council and;
- 3.3.2 thereafter to pay the Bus Service Second Cash Deposit on the first anniversary of the Occupation of the 210th Residential Unit and not to Occupy or permit any further Occupation of any Residential Unit unless and until the Bus Service Second Cash Deposit has been paid in full on the first anniversary of the Occupation of the 210th Residential Unit and;
- 3.3.3 on the first anniversary following the receipt of the Bus Service Second Cash Deposit paid pursuant to paragraph 3.3.2 above the Owner shall submit the Annual Report to the County Council to review the contents therein;
- 3.3.4 that following review of the first Annual Report the County Council will identify the Annual Reporting Figure which will be used to determine the Annual Bus Balancing Payment sum and in the event the Annual Bus Balancing Payment sum is:
 - (a) less than the sum of £1,280,000 (one million two hundred and eighty thousand pounds) the difference shall be paid to the Owner by the County Council within 30 days of notification by the County Council of the sum of the Annual Bus Balancing Payment following receipt of the Annual Report; or
 - (b) greater than the sum of £1,280,000 (one million two hundred and eighty thousand pounds) the difference shall be paid by the Owner to the County Council within 30 days of notification by the County Council of the sum of the Annual Bus Balancing Payment such sum shall be paid by the Owner prior to the Occupation of any further Residential Units within the Development and;
 - (c) following the expiry of the 30 day notification period referred to in paragraph 3.3.4(b) no further Residential Units within the Development shall be Occupied unless and until the Owner has paid the Annual Bus Balancing Payment (if required to be paid pursuant to this paragraph 3.3.4)
- 3.3.5 thereafter the Owner covenants to submit subsequent Annual Reports on each anniversary of the receipt of the previous Annual Report and on each occasion following receipt of the Annual Report the County Council will firstly identify the Annual Reporting Figure which will be used to determine the Annual Bus Balancing Payment sum and in the event the Annual Bus Balancing Payment sum is:

- (a) less than the current value of the Subsequent Bus Service Cash Deposit Liability the difference shall be paid to the Owner by the County Council within 30 days of notification of the sum of the Annual Bus Balancing Payment following receipt of the Annual Report; or
 - (b) greater than the current value of the Subsequent Bus Service Cash Deposit Liability the difference shall be paid by the Owner to the County Council within 30 days of notification by the County Council of the sum of the Annual Bus Balancing Payment such sum shall be paid by the Owner prior to the Occupation of any further Residential Units within the Development and
 - (c) following the expiry of the 30 day notification period referred to in paragraph 3.3.5(b) no further Residential Units within the Development shall be Occupied unless and until the Owner has paid the Annual Bus Balancing Payment (if required to be paid pursuant to this paragraph 3.3.5)
- 3.4 If in the opinion of the County Council the Owner fails to procure or maintain the operation of the Bus Service in accordance with the Public Transport Strategy the County Council shall issue the Owner with a notice setting out the nature of the breach and specifying a reasonable time (unless it relates to a matter of public safety in which case there will be no notice period) in which to remedy such breach (a "**Bus Service Default Notice**")
- 3.5 In the event the Owner fails to remedy the breach within the period specified in the Bus Service Default Notice the County Council will be entitled to do all such things necessary to remedy the breach and/or to secure compliance as set out in the Bus Service Default Notice; and
- 3.6 In the event the Owner has paid the Bus Service Initial Cash Deposit and/or the Bus Service Second Cash Deposit which forms part of the Bus Service Cash Deposit Liability and Subsequent Bus Service Cash Deposit Liability the County Council shall withdraw such proportion from the Bus Service Cash Deposit Liability and Subsequent Bus Service Cash Deposit Liability as may be certified by the Director in order to remedy the breach as set out in the Bus Service Default Notice or such alternative measures the Director in his absolute discretion determines will secure compliance of the Bus Service and further:
- 3.7 The Owner shall continue to submit the Annual Reports and pay the Annual Bus Balancing Payment in accordance with the provisions of paragraphs 3.3.3 and 3.3.4 and 3.3.5 until the earlier of the following dates ("the End Date"):
- 3.7.1 the date on which the County Council determines in its absolute discretion and provides written approval of its decision that the Bus Service can run viably to the satisfaction of the County Council or;
 - 3.7.2 up to and including three months from final Occupation of any Residential Unit within the Development
- 3.8 In the event the County Council holds any remaining sum of the Annual Bus Balancing Payment on the End Date it shall return such sum to the party which paid the Annual Bus Balancing Payment within 30 days.
- 4 KNOWLE RAIL HALT**
- 4.1 The Owner covenants with the Borough Council that it shall safeguard and shall not develop the Knowle Rail Halt Land until Practical Completion of the Residential Units comprised in the Development or such earlier point in time if agreed with the Borough Council.

- 4.2 The Owner covenants with the Borough Council that if following Commencement of Development it receives a Knowle Rail Halt Transfer Request before Practical Completion of the Residential Units comprised in the Development it shall transfer the freehold interest for £1 subject to a restrictive covenant that the transferee shall only use the Knowle Rail Halt Land for the purposes of providing the Knowle Rail Halt.
- 4.3 The obligations pursuant to this paragraph 4 shall cease if no Knowle Rail Halt Transfer Request is received by the Owner until the later of 25 years from Commencement of Development or 5 years following Practical Completion of the Development.

SCHEDULE 7

Travel Plans

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“Annual Monitoring Report”	a report prepared by the Site Wide Travel Plan Co-Ordinator(s) (at the Owner’s expense) annually in accordance with the provisions of this Schedule which shall analyse the success of the Residential Travel Plan and Framework Workplace Travel Plan and recommend such reasonable changes as may be necessary to improve the effectiveness of the Residential Travel Plan and “Annual Monitoring Reports” shall be construed accordingly;
“Biennial Monitoring Report”	a report prepared by the Site Wide Travel Plan Co-Ordinator(s) (at the Owner’s expense) in accordance with the provisions of this Schedule which shall analyse the success of the Unit Specific Workplace Travel Plan and recommend such reasonable changes as may be necessary to improve the effectiveness of the Unit Specific Workplace Travel Plan and for the avoidance of doubt each Unit Specific Commercial Unit shall require a Biennial Monitoring Report and “Biennial Monitoring Reports” shall be construed accordingly;
“Commercial Unit”	any Unit Specific Commercial Unit and Exempt Commercial Unit and “Commercial Units” shall be construed accordingly
“Exempt Commercial Unit”	those Commercial Units within the Development that do not meet the Workplace Travel Plan Threshold and “Exempt Commercial Units” shall be construed accordingly;
“Director”	the Director of Economy Transport and Environment at the County Council or his appointed representative for the time being or successor;
“District Centre Primary School”	has the meaning given to it in Schedule 2;
“District Centre Secondary School”	has the meaning given to it in Schedule 2;
“Framework Residential Travel Plan”	the Framework Residential Travel Plan dated March 2019 Revision 3 as agreed by the County Council attached to this Deed at Appendix 10 or any amendment or variation thereof to be submitted by the Owner (at the Owner’s expense) to the County Council for approval;

“Framework Workplace Travel Plan”	the Framework Workplace Travel Plan dated March 2019 as agreed by the County Council attached to this Deed at Appendix 11 or any amendment or variation thereof to be submitted by the Owner (at the Owner’s expense) to the County Council for approval;
“Framework Workplace Travel Plan Monitoring Fee”	the sum of £1500 (one thousand five hundred pounds) payable by the Owner to the County Council (and thereafter a sum of £1500 (one thousand five hundred pounds) payable annually by the Owner) towards the costs incurred by the County Council in monitoring and reviewing the Framework Workplace Travel Plan both to be paid in accordance with the provisions of this Schedule;
“Northern Primary School”	has the meaning given to it in Schedule 2;
“Residential Travel Plan”	the final and full form Residential Travel Plan based on the Framework Residential Travel Plan such Residential Travel Plan to be submitted by the Owner at the Owner’s expense to be approved by the County Council and/or any amendment or variation thereof to be submitted by the Owner (at the Owner’s expense) to the County Council for approval;
“Residential Travel Plan Approval Fee”	the sum of £1500 (one thousand five hundred pounds) payable by the Owner to the County Council towards the costs incurred or to be incurred by the County Council in approving the Residential Travel Plan to be paid to the County Council in accordance with the provisions of this Schedule;
“Residential Travel Plan Monitoring Fee”	the sum of £3000 (three thousand pounds) payable by the Owner to the County Council (and thereafter a sum of £3000(three thousand pounds) payable annually)) both payable by the Owner towards the costs incurred by the County Council in monitoring and reviewing the Residential Travel Plan to be paid to the County Council in accordance with the provisions of this Schedule;
“Residential Travel Plan Deposit”	the total sum of £1,163,500 (one million one hundred and sixty three thousand five hundred pounds) being the cash deposit sum paid by the Owner to the County Council towards the cost of implementation and compliance with the targets/measures of the Residential Travel Plan (as estimated by the County Council) to be provided in accordance with the provisions of this Schedule;
“Residential Travel Plan Further Deposit”	any monetary sum determined by the County Council to be paid by the Owner to the County Council in accordance with the provisions of this Schedule and such sum is required to restore and maintain the Residential Travel Plan Initial Deposit that is required to implement and ensure compliance with the Residential Travel Plan and for the

avoidance of doubt the Residential Travel Plan Further Deposit forms part of the Residential Travel Plan Deposit;

“Residential Travel Plan Initial Deposit”

the initial sum of £210,000 (two hundred and ten thousand pounds) being a cash deposit to be paid by the Owner and to be deposited with the County Council in accordance with the provisions of this Schedule and for the avoidance of doubt this sum is to be maintained by the Owner until final Occupation of the Residential Unit in the Development in accordance with the provisions relating to the Residential Travel Plan Further Deposit;

“School Travel Plan Contribution”

the sum of £12,500 (twelve thousand five hundred pounds) to be paid for each school in accordance with paragraph 8 of this Schedule by the Owner to the County Council for its revenue budget in relation to the production and monitoring of school travel plans for each of the following schools serving the Development:

- (a) District Centre Primary School;
- (b) District Centre Secondary School;
- (c) Northern Primary School;
- (d) Western Primary School;

to be paid in accordance with the provisions of this Schedule and for the avoidance of doubt the total sum payable will be £50,000 (fifty thousand pounds);

“Site Wide Travel Plan Co-Ordinator”

either one or two persons appointed and employed by the Owner (at the Owner's expense) to implement and co-ordinate the requirements of both the Residential Travel Plan and, the Framework Workplace Travel Plan;

“Unit Specific Commercial Unit”

any Commercial Unit which exceeds the Workplace Travel Plan Threshold constructed or converted for commercial use within the Development and “Unit Specific Commercial Units” shall be construed accordingly;

“Unit Specific Travel Plan Co-Ordinator”

either one or two persons appointed and employed by the Owner (at the Owner's expense) to implement and maintain the requirements of the Unit Specific Workplace Travel Plan;

“Unit Specific Workplace Travel Plan”

the final and full form Unit Specific Workplace Travel Plan based on the Framework Workplace Travel Plan to apply to Unit Specific Commercial Units within the Development which exceed the Workplace Travel Plan Threshold. Such Unit Specific Workplace Travel Plan to be submitted by the Owner at the Owner's expense and approved by the County Council and/or any amendment or variation thereof to be submitted by the Owner (at the Owner's expense) to the

County Council for approval and "Unit Specific Workplace Travel Plans" shall be construed accordingly;

"Western Primary School"	has the meaning given to it in Schedule 2;
"Workplace Travel Plan Approval Fee"	the sum of £750 (seven hundred and fifty pounds) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards the costs incurred or to be incurred by the County Council in approving the Unit Specific Workplace Travel Plan in respect each new Unit Specific Commercial Unit to which the Unit Specific Workplace Travel Plan applies;
"Workplace Travel Plan Deposit"	the sum not exceeding £40,000 (forty thousand pounds) being a cash deposit paid by the Owner to the County Council towards the cost of implementation and compliance with the targets and/or measures of the Unit Specific Workplace Travel Plan and or Exempt Workplace Travel Plan (as estimated by the County Council) to be provided in accordance with the provisions of this Schedule;
"Workplace Travel Plan Initial Deposit"	the initial sum of £20,000 (twenty thousand pounds) being a cash deposit to be paid by the Owner and to be deposited with the County Council in accordance with the provisions of this Schedule;
"Workplace Travel Plan Further Deposit"	any monetary sum determined by the County Council and/or Director to be paid by the Owner in accordance with the provisions of this Schedule and such sum is required to restore and maintain the Workplace Travel Plan Minimum Balance that is required to implement and ensure compliance with the Unit Specific Workplace Travel Plan and/or Framework Workplace Travel Plan and deposited with the County Council in accordance with this Schedule PROVIDED ALWAYS THAT the aggregate of all such sums shall not exceed £40,000 (forty thousand pounds) and for the avoidance of doubt the Workplace Travel Plan Further Deposit forms part of the Workplace Travel Plan Deposit;
"Workplace Travel Plan Monitoring Fee"	the sum of £5000 (five thousand pounds) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards the costs incurred or to be incurred by the County Council in monitoring and reviewing the Unit Specific Workplace Travel Plan for each relevant Unit Specific Commercial Unit to which the Unit Specific Workplace Travel Plan applies;
"Workplace Travel Plan Minimum Balance"	a minimum sum of £20,000 (twenty thousand pounds) paid by the Owner and maintained at all times by the Owner (through the payment of the Workplace Travel Plan Further Deposit if appropriate) which is deposited with the County Council and required by the County Council and- Director at

all times up to and including the second anniversary of the Occupation of the final Commercial Unit in the Development;

“Workplace Travel Plan Threshold”

the threshold at which the floorspace of a Commercial Unit for a land use in the first column in the following table exceeds the threshold set out in the second column the following table and therefore requires a Unit Specific Workplace Travel Plan:

Land Use	Threshold above which a Unit Specific Workplace Travel Plan is required
Column 1	Column 2
Commercial: B1 and B2	2500 sqm
Commercial: B8	5000 sqm
Retail	1000 sqm
Education	2500 sqm
Health Establishments	2500 sqm
<i>Care Establishments</i>	<i>500 sqm or 50 bedrooms</i>
Leisure: General	1000 sqm
Leisure: Stadia, ice rinks	All (1500 seats)
Miscellaneous Commercial	500 sqm

2 Residential Travel Plan Implementation

The Owner covenants with the County Council:

- 2.1 To implement and comply with the requirements of the Residential Travel Plan;
- 2.2 Not to Commence Development unless and until the Owner has submitted to the County Council for approval (such approval not to be unreasonably withheld or delayed) a Residential Travel Plan in accordance with the Framework Residential Travel Plan;
- 2.3 Not to Occupy or permit Occupation of any Residential Unit within the Development unless and until it has implemented the requirements and measures of the Residential Travel Plan so far as such requirements and measures are required before Occupation and following Occupation to implement and comply with the requirements and measures of the Residential Travel Plan and achieve the targets set therein;
- 2.4 Not to Occupy or Permit Occupation within the Development unless and until the Owner has appointed a Site Wide Travel Plan Co-ordinator to implement and oversee the Residential Travel Plan and thereafter to retain the Site Wide Travel Plan Co-ordinator for up to and including two years from the date of the Occupation of the final Residential Unit;

- 2.5 To submit to the County Council an Annual Monitoring Report produced by the Site Wide Travel Plan Co-ordinator in relation to the Residential Travel Plan on the:
- 2.5.1 anniversary of first Occupation of any Residential Unit and;
 - 2.5.2 every subsequent anniversary up to and including the second anniversary of the Occupation of the final Residential Unit.
- 2.6 Not to Commence or allow Commencement of the Development unless and until the Owner has paid the County Council the Residential Travel Plan Approval Fee;
- 2.7 Not to Occupy or permit Occupation of any Residential Unit within the Development unless and until the Owner has paid the County Council the Residential Travel Plan Monitoring Fee and thereafter to pay annual instalments in the sum of £3,000 on the anniversary of first Occupation of the Residential Unit up to and including two years from the date of the Occupation of the final Residential Unit within the Development;
- 2.8 Not to Occupy or permit Occupation of any further Residential Units within the Development unless and until the Residential Travel Plan Monitoring Fee is paid at each anniversary from the date of the first Occupation of Residential Unit up to and including two years from the date of the final Occupation of the Residential Unit;
- 2.9 That if the Owner or its successors in title Occupy the Development or any part thereof it or they will implement the Residential Travel Plan relating to the Development or such part of the Site to be Occupied and shall use reasonable endeavours to achieve the targets set therein.

3 Residential Travel Plan Deposit

The Owner covenants to pay the Residential Travel Plan Deposit to the County Council in the following tranches:

- 3.1 The Owner shall pay the Residential Travel Plan Initial Deposit in full prior to Occupation of any Residential Unit within the Development and shall not Occupy or allow Occupation of any Residential Unit within the Development unless and until the Residential Travel Plan Initial Deposit is paid in full.
- 3.2 In the event that the County Council shall have expended some or all of the Residential Travel Plan Initial Deposit pursuant to the paragraphs 3.8 and 3.9 below the Owner shall pay the Residential Travel Plan Further Deposit to the County Council prior to Occupation of 1000 Residential Units within the Development and shall not Occupy or permit Occupation of more than 1000 Residential Units within the Development unless and until such sum as determined by the County Council is paid by the Owner in order to restore the balance of the Residential Travel Plan Initial Deposit PROVIDED THAT if at any time between the first Occupation and 1000th Occupation the County Council notify the Owner in writing that the Residential Travel Plan Initial Deposit has fallen below £50,000 (fifty thousand pounds) the Owner covenants to pay the Residential Travel Plan Further Deposit within 28 days of receipt of the written notice and shall not Occupy or permit further Occupation of any further Residential Until unless and until such sum determined by the County Council is paid by the Owner to restore the balance of the Residential Travel Plan Initial Deposit.
- 3.3 In the event that the County Council shall have expended some or all of the Residential Travel Plan Initial Deposit pursuant to the paragraphs 3.8 and 3.9 below the Owner shall pay the Residential Travel Plan Further Deposit to the County Council prior to Occupation of more than 2000 Residential Units within the Development and shall not Occupy or permit Occupation of more than 2000 Residential Units within the Development unless and until such sum

determined by the County Council is required to restore the balance of the Residential Travel Plan Initial Deposit PROVIDED THAT if at any time between the 1001th Occupation and 2000th Occupation the County Council notify the Owner in writing that the Residential Travel Plan Initial Deposit has fallen below £50,000 (fifty thousand pounds) the Owner covenants to pay the Residential Travel Plan Further Deposit within 28 days of receipt of the written notice and shall not Occupy or permit further Occupation of any further Residential Until unless and until such sum determined by the County Council is paid by the Owner to restore the balance of the Residential Travel Plan Initial Deposit.

- 3.4 In the event that the County Council shall have expended some or all of the Residential Travel Plan Initial Deposit pursuant to the paragraphs 3.8 and 3.9 below the Owner shall pay a Residential Travel Plan Further Deposit to the County Council prior to Occupation of more than 3000 Residential Units within the Development and shall not Occupy or permit Occupation of more than 3000 Residential Units within the Development unless and until such sum as determined by the County Council is paid by the Owner in order to restore the balance of the Residential Travel Plan Initial Deposit PROVIDED THAT if at any time between the 2001th Occupation and 3000th Occupation the County Council notify the Owner in writing that the Residential Travel Plan Initial Deposit has fallen below £50,000 (fifty thousand pounds) the Owner covenants to pay the Residential Travel Plan Further Deposit within 28 days of receipt of the written notice and shall not Occupy or permit further Occupation of any further Residential Until unless and until such sum determined by the County Council is paid by the Owner to restore the balance of the Residential Travel Plan Initial Deposit.
- 3.5 In the event that the County Council shall have expended some or all of the Residential Travel Plan Initial Deposit pursuant to paragraphs 3.8 and 3.9 the Owner shall pay a Residential Travel Plan Further Deposit to the County Council prior to Occupation of more than 4000 Residential Units within the Development and shall not Occupy or permit Occupation of more than 4000 Residential Units within the Development unless and until such sum as determined by the County Council is paid by the Owner in order to restore the balance of the Residential Travel Plan Initial Deposit PROVIDED THAT if at any time between the 3001th Occupation and 4000th Occupation the County Council notify the Owner in writing that Residential Travel Plan Initial Deposit has fallen below £50,000 (fifty thousand pounds) the Owner covenants to pay the Residential Travel Plan Further Deposit within 28 days of receipt of the written notice and shall not Occupy or permit further Occupation of any further Residential Until unless and until such sum determined by the County Council is paid by the Owner to restore the balance of the Residential Travel Plan Initial Deposit.
- 3.6 In the event that the County Council shall have expended some or all of the Residential Travel Plan Initial Deposit pursuant to paragraphs 3.8 and 3.9 the Owner shall pay a Residential Travel Plan Further Deposit to the County Council prior to Occupation of more than 5000 Residential Units within the Development and shall not Occupy or permit Occupation of more than 5000 Residential Units within the Development unless and until such sum as determined by the County Council is paid by the Owner in order to restore the balance of the Residential Travel Plan Initial Deposit PROVIDED THAT if at any time between the 4001th Occupation and 5000th Occupation the County Council notify the Owner in writing that the Residential Travel Plan Initial Deposit has fallen below £50,000 (fifty thousand pounds) the Owner covenants to pay the Residential Travel Plan Further Deposit within 28 days of receipt of the written notice and shall not Occupy or permit further Occupation of any further Residential Until unless and until such sum determined by the County Council is paid by the Owner to restore the balance of the Residential Travel Plan Initial Deposit.
- 3.7 For the avoidance of doubt the aggregate amount of the payments made by the Owner to the County Council pursuant to paragraphs 3.1 to 3.6 shall not exceed the Residential Travel Plan Deposit.

- 3.8 If in the opinion of the County Council (acting reasonably) the Owner fails to deliver or comply with any or all of the agreed measures and/or requirements and/or targets contained within the Residential Travel Plan then the County Council shall serve written notice on the Owner giving the Owner no less than 28 Working Days to deliver or comply with the agreed measures and/or requirements and/or targets within the Residential Travel Plan to the County Council's reasonable satisfaction and to provide evidence of the same.
- 3.9 In the event the Owner fails to deliver or comply with any or all of the agreed measures and/or requirements and/or targets contained within the Residential Travel Plan within 28 Working Days of receiving the written notice described at paragraph 3.8 above of this part, then the County Council will be entitled to draw down such proportion of the Residential Travel Plan Initial Deposit or such sum as may be certified by the Director to be required up to the amount of the balance of the Residential Travel Plan Deposit (which has not been drawn down) in order to remedy the failure to achieve and implement the agreed measures and/or requirements and/or targets contained within the Residential Travel Plan or such alternative measures as Director in his absolute discretion determines will achieve the overall aims of the Residential Travel Plan (at no greater cost to the Owner) achieve the overall aims of the Residential Travel Plan.

4 Unit Specific Workplace Travel Plan

The Owner covenants with the County Council:

- 4.1 Not to Occupy or permit Occupation of any Unit Specific Commercial Unit in the Development unless and until and until the Owner has submitted to the County Council for written approval a Unit Specific Workplace Travel Plan in accordance with the Framework Workplace Travel Plan;
- 4.2 Not to Occupy or permit Occupation of any Unit Specific Commercial Unit in the Development unless and until the County Council has provided its written approval of the Unit Specific Workplace Travel Plan;
- 4.3 Not to Occupy or permit Occupation of the relevant Unit Specific Commercial Unit in the Development unless and until the Owner has implemented and complied with the requirements of the Unit Specific Workplace Travel Plan and;
- 4.4 to include in any tenants lease or occupiers licence a covenant that the tenant or occupier of any Unit Specific Commercial Unit in the Development will implement that approved Unit Specific Workplace Travel Plan in so far as it relates to their tenancy and/ or Occupation and that reasonable endeavours will be used by Owner to enforce such obligations against such tenant or occupier and further;
- 4.5 within 20 Working Days of the first letting of any Unit Specific Commercial Unit within the Development or any part thereof to procure the delivery to the County Council of a notice giving the following details:
- 4.5.1 the name and address of the tenant;
 - 4.5.2 a description of the extent of the demise forming the Development or part thereof;
 - 4.5.3 the length of the term and;
 - 4.5.4 a sufficient extract of the lease setting out the terms of the covenant described in paragraph 4.4 of this Schedule above.

- 4.6 Not to Occupy or Permit Occupation of any Unit Specific Commercial Unit in the Development unless and until the Owner has:
- 4.6.1 appointed a Unit Specific Travel Plan Co-ordinator to implement and oversee the relevant Unit Specific Workplace Travel Plan; and
 - 4.6.2 thereafter to retain the Unit Specific Travel Plan Co-ordinator up to and including five years from first Occupation of the relevant Unit Specific Commercial Unit to which the Unit Specific Workplace Travel Plan relates.
- 4.7 To submit to the County Council a Biennial Monitoring Report or Biennial Monitoring Reports (as the case may be) produced by the Unit Specific Travel Plan Co-ordinator and each Biennial Monitoring Report produced will be in relation to each Occupied Unit Specific Commercial Unit in the Development to which a Unit Specific Workplace Travel Plan relates and the Owner shall submit each Biennial Monitoring Report firstly on the:
- 4.7.1 anniversary of first Occupation of the relevant Unit Specific Commercial Unit and thereafter on;
 - 4.7.2 the third anniversary of first Occupation of the relevant Unit Specific Commercial Unit and up to and including the 5th anniversary of the Occupation of the relevant Unit Specific Commercial Unit.
- 4.8 Not to Occupy or permit Occupation of the relevant Unit Specific Commercial Unit in the Development unless and until the Owner has paid the County Council the Workplace Travel Plan Approval Fee for the relevant Unit Specific Commercial Unit to which the Unit Specific Workplace Travel Plan applies.
- 4.9 Not to Occupy or permit Occupation of the relevant Unit Specific Commercial Unit in the Development unless and until the Owner has paid the County Council the Workplace Travel Plan Monitoring Fee in full for the relevant Unit Specific Commercial Unit to which the Unit Specific Workplace Travel Plan applies.

5 Exempt Commercial Units

The Owner covenants:

- 5.1 not to Occupy or permit Occupation of any Exempt Commercial Unit within the Development unless and until the Owner has complied with the measures and/or requirements of the Framework Workplace Travel Plan to achieve the targets set therein;
- 5.2 to include in any tenants lease or occupiers licence a covenant that the tenant or occupier of the Exempt Commercial Unit will implement the approved Framework Workplace Travel Plan in so far as it relates to their tenancy and or Occupation and that reasonable endeavours will be used by Owner to enforce such obligations against such tenant or occupier and further;
- 5.3 within 20 Working Days of the first letting of any Exempt Commercial Unit within the Development or any part thereof to procure the delivery to the County Council of a notice giving the following details:
- 5.3.1 the name and address of the tenant, leaseholder and/or owner;
 - 5.3.2 a description of the development and extent of the demise forming the Development or part thereof;

- 5.3.3 the length of the term; and
 - 5.3.4 a sufficient extract of the lease setting out the terms of the covenant described in paragraph 5.2 of this Schedule above.
- 5.4 To submit to the County Council an Annual Monitoring Report produced by the Site Wide Travel Plan Co-ordinator in relation to the Framework Travel Plan on the:
- 5.4.1 anniversary of first Occupation of any Exempt Commercial Unit; and
 - 5.4.2 every subsequent anniversary up to and including the second anniversary of the Occupation of the final Exempt Commercial Unit.
- 5.5 Not to Occupy or permit Occupation of any Exempt Commercial Unit within the Development unless and until the Owner has paid the County Council the Framework Workplace Travel Plan Monitoring Fee.
- 5.6 Thereafter to pay the Framework Workplace Travel Plan Monitoring Fee in annual instalments in the sum of £1500 on the anniversary of first Occupation of the Exempt Commercial Unit within the Development up to and including two years from the date of the final Occupation of any Exempt Commercial Unit.
- 5.7 Not to Occupy or permit Occupation of any further Exempt Commercial Unit within the Development unless and until the Framework Workplace Travel Plan Monitoring Fee is paid at each anniversary from the date of the first Occupation of any Exempt Commercial Unit up to and including two years from the date of the final Occupation of the Exempt Commercial Unit.

6 Workplace Travel Plan Deposit

The Owner covenants to pay the Workplace Travel Plan Deposit to the County Council as follows in the following tranches:

- 6.1 To pay the Workplace Travel Plan Initial Deposit in full to the County Council prior to Occupation of the first Commercial Unit within the Development.
- 6.2 Not to Occupy or permit first Occupation of any Commercial Unit within the Development unless and until the Owner has paid the Workplace Travel Plan Initial Deposit to the County Council.
- 6.3 In the event that the County Council shall have expended some of the Workplace Travel Plan Initial Deposit pursuant to the paragraphs 6.5 and 6.6 below the Owner shall pay the Workplace Travel Plan Further Deposit to the County Council such sum as shall be required to restore the balance to the Workplace Travel Plan Minimum Balance.
- 6.4 No further Commercial Unit within the Development shall be Occupied unless and until the Workplace Travel Plan Further Deposit has been paid and the sum restored to the Workplace Travel Plan Minimum Balance in accordance with paragraph 6.3.
- 6.5 If in the opinion of the County Council (acting reasonably) the Owner fails to deliver or comply with any or all of the agreed measures and/or targets contained in relation to the Framework Workplace Travel Plan or the Owner fails to deliver or comply with any or all of the agreed measures and/or targets contained within the Unit Specific Workplace Travel Plan then the County Council shall serve written notice on the Owner giving the Owner no less than 28 Working Days to procure that the relevant Commercial Unit within the Development comply with the relevant provisions of the Unit Specific Travel Plan and/or Framework Workplace

Travel Plan (as the case may be) to the County Council's reasonable satisfaction and to provide evidence of the same PROVIDED THAT

- 6.6 if in the event the Owner fails to deliver or comply with any or all of the agreed measures and/or targets contained within the Framework Workplace Travel Plan for the relevant Exempt Commercial Unit or the Owner fails to deliver or comply with any or all of the agreed measures and/or targets contained within the Unit Specific Workplace Travel Plan for the relevant Unit Specific Commercial Unit within 28 Working Days of receiving the written notice described at this paragraph 6.6 of this Part, then the County Council will be entitled to draw down such proportion of the Workplace Travel Plan Deposit and as may be certified by the Director to be required up to the amount of the Workplace Travel Plan Deposit in order to remedy the failure to achieve and implement the measures and/or targets as determined by the Director or such alternative measures as the Director in his absolute discretion determines will achieve the overall aims of the of the Unit Specific Commercial Unit and/or Exempt Commercial Unit.

7 Travel Plan Repayment

- 7.1 On request of the Owner the County Council shall return any unspent or uncommitted portion of the Residential Travel Plan Deposit together with any interest accrued (if any) on the second anniversary of Occupation of the final Residential Unit within the Development.
- 7.2 On request of the Owner the County Council shall return any unspent or uncommitted portion of the Workplace Travel Plan Deposit together with any interest accrued (if any) on the second anniversary of Occupation of the final Commercial Unit within the Development

8 School Travel Plan

- 8.1 The Owner covenants to pay the School Travel Plan Contribution to the County Council for the Northern Primary School prior to the opening of the Northern Primary School.
- 8.2 The County Council agrees to use the School Travel Plan Contribution paid in respect of the Northern Primary School for the production and monitoring of the School Travel Plan for the Northern Primary School.
- 8.3 The Owner covenants to pay the School Travel Plan Contribution for the Western Primary School to the County Council prior to the opening of the Western Primary School.
- 8.4 The County Council covenants to use the School Travel Plan Contribution paid in respect of the Western Primary School for the production and monitoring of the School Travel Plan for the Western Primary School
- 8.5 The Owner covenants to pay the School Travel Plan Contribution for the District Centre Primary School to the County Council prior to the opening of the District Centre Primary School.
- 8.6 The County Council covenants to use the School Travel Plan Contribution paid in respect of the District Centre Primary School for the production and monitoring of the School Travel Plan for the District Centre Primary School.
- 8.7 The Owner covenants to pay the School Travel Plan Contribution for the District Centre Secondary School to the County Council prior to the opening of the District Centre Secondary School.
- 8.8 The County Council covenants to use the School Travel Plan Contribution paid in respect of the District Centre Secondary School for the production and monitoring of the School Travel Plan for the District Centre Secondary School.

SCHEDULE 8

Highways

1 DEFINITION

1.1 In this Schedule the following terms have the following meanings:

"A32 / A27 Delme Arms Roundabout Improvements Contribution"	the sum of £805,000 (EIGHT HUNDRED AND FIVE THOUSAND POUNDS (Index Linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards the provision of highway improvement works at the junction of the A32 with A27 Delme Arms Roundabout as shown in principle on plan 6091/SK/702 Rev A;
"A32 / Broadcut Roundabout & Standard Way Cycle Infrastructure Works"	the works consisting of the provision of improvements to the local pedestrian and cycle route in the direction of Broadcut as shown in principle on the plan 6091/SK/807 Rev C and as agreed in accordance with any Highways Agreement;
"A32 / Broadcut Roundabout Works"	improvement works to upgrade the existing roundabout at junction of the A32/Wickham Road and Southampton Road and the junction of the A32/Broadcut as shown in principle on the plan 6091/GA/350 Rev B and as agreed in accordance with any Highways Agreement;
"A32 / Broadway Roundabout Works"	the provision of a vehicular access on the A32 and the Broadway roundabout as shown in principle on the plans referred to in Schedule 13 for the M27 Junction 10 Improvement Works and as agreed in accordance with any Highways Agreement;
"A32 / Central Avenue Left In/Left Out Works"	the construction of a left in left out access on the A32 Central Avenue to the Boundary Oak School on that part of the Land to the east of the A32 as shown in principle on the plan 6091/GA/3410 Rev E as agreed in accordance with any Highways Agreement and further the Owner shall use reasonable endeavours to deliver the Additional Works as part of the A32/Central Avenue Left In/Left Out Works;
"A32 / Central Avenue Roundabout Works"	the provision of a permanent roundabout at the junction of the A32 and Central Avenue as shown in principle on the plan 6091/GA/341 Rev F and as agreed in accordance with any Highways Agreement;
"A32 / Knowle Road / Chalk Lane Roundabout Works "	the improvement of the A32/Knowle Road/Chalk Lane Roundabout as shown in principle on the plan 6091/GA/321 Rev F and as agreed in accordance with any Highways Agreement;
"A32 / North Hill / Furze Court Works"	the provision of a signalised junction incorporating pedestrian, cycle, bus priority and vehicular provision at North Hill onto the A32 as shown in principle on the plan 6091/TS/404 Rev H as agreed in accordance with any Highways Agreement;

"A32 / Welborne Way Roundabout Works"	the provision of a permanent vehicular roundabout access onto the A32 as shown in principle on the plan 6091/GA/311 Rev G including the shared use route extension on the southern arm to the "A32 / Knowle Road / Chalk Lane Roundabout Works and as agreed in accordance with any Highways Agreement;
"A32 Bus Link Works"	the provision of a bus lane between the A32/North Hill/Furze Court Works and the High Street roundabout (via the Eastern Employment Area (refer to Land Use Plan) south and east of High Street roundabout) as shown in principle on the plan 6091/GA/1005 Rev H as agreed in accordance with any Highways Agreement;
"A32 Hoads Hill / A334 Junction Works"	the provision of improvement works involving the narrowing of the carriageway of the junction at the A32 Hoads Hill with A334 as shown in principle on the plan 6091/SK/1100 Rev A and as agreed in accordance with any Highways Agreement;
"A32 Hoads Hill Cycle Improvements Works"	the works consisting of the provision of improvements to the local pedestrian and cycle route between the A32 Hoads Hill/A334 roundabout and the A32/Welborne Way Roundabout Works such works to be delivered in two phases, the First Phase and the Second Phase as shown in principle on the plan 6091/SK/106 Rev E and as agreed in accordance with any Highways Agreement;
"A32 Old Turnpike Junction Alteration Works"	the improvement works involving the removal of a dedicated left filter lane as part of improvements to the junction of the A32 at Old Turnpike to facilitate traffic flow as shown in principle on the plans 6091/SK/126 Rev B and as agreed in accordance with any Highways Agreement;
"A32 Pegasus Crossing Contribution"	the sum of £225,000 (TWO HUNDRED AND TWENTY FIVE THOUSAND POUNDS) (Index Linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards the provision of a Pegasus Crossing on the A32 as shown in principle on plan 6091/GA/332 Rev B;
"A32 Toucan Crossing Contribution"	the sum of £225,000 (TWO HUNDRED AND TWENTY-FIVE THOUSAND POUNDS) (Index Linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards the provision of a Toucan Crossing on the A32 as shown in principle on plan 6091/GA/341 Rev F;
"A32 Wickham Road Works"	the works consisting of carriageway widening and parking provisions to the A32 Wickham Road as shown in principle on the plans 6091/SK/084 Rev C, 6091/SK/085 Rev B, 6091/SK/086 Rev B and as agreed in accordance with any Highways Agreement;
"A334 Winchester Road/The Square/ Station Road Works"	works to improve the provision of footway/cycleway routes on the A334 Winchester Road and to The Square and to Station Road as shown in principle on the plans 6091/SK/800 Rev B and as agreed in accordance with any Highways Agreement;

“Additional Works”	the provision of an uncontrolled crossing as part of A32/Central Avenue Left In/Left Out Works on the A32 together with a shared use footway provision east of the A32 to be constructed to tie into the shared use footway being provided as part of A32/Broadway Roundabout Works as agreed in accordance with any Highways Agreement;
“Adoptable Roads”	a road or roads within the Development to be Adopted;
“Adopted Road”	those internal roads within the Development (except those Unadopted Roads) that have 10 (ten) or more Residential Units abutting the internal road to be Adopted and “Adopted Roads” and “Adoption” shall be construed accordingly;
“Adoption”	the minimum extent of any adoption by the County Council under s.38 Highways Act 1980 of Land dedicated by the Owner within the Adopted Road which shall be from the kerb to kerb of the vehicular carriageway within the Adopted Road and “Adopted” and “Adopt” shall be construed accordingly;
“Adoption Certificate”	a certificate issued by the County Council pursuant to an agreement under section 38 Highways Act;
“Alternative Town Centre Cycle Route Contribution”	the sum of £136,136 (ONE HUNDRED AND THIRTY SIX THOUSAND ONE HUNDRED AND THIRTY SIX POUNDS) (Index Linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards an alternative cycle route from the Development to Fareham town centre;
“Allotment”	has the same meaning as in Clause 1 of this Deed and “Allotments” shall be construed accordingly;
“Area A”	the area identified A in the ownership of the Owner within the Land as identified in the appended plan reference ref 7328_104 Rev D as appended to this Deed at Appendix 22;
“Area B”	the area identified B in the ownership of the Owner within the Land as identified in the appended plan reference ref 7328_104 Rev D as appended to this Deed at Appendix 22;
“Area X”	the area identified X in the ownership of the Owner within the Land as identified in plan reference ref 7328_104 Rev D as appended to this Deed at Appendix 22;
“Area Y”	the area identified Y in the ownership of the Owner within the Land as identified in plan reference ref 7328_104 Rev D as appended to this Deed at Appendix 22;
“Certificate of Completion”	a certificate issued by the County Council confirming the Highway Works have been executed to its satisfaction and can be placed on maintenance;
“Commercial Unit”	has the same meaning as in Schedule 7 of this Deed

“District Centre Primary School Site”	has the same meaning as in Schedule 2 of this Deed
“District Centre Secondary School Site”	has the same meaning as in Schedule 2 of this Deed
“Eastern Employment Area”	has the meaning at defined in Clause 1 in this Deed
“Employment Areas”	the Eastern Employment Area and the Western Employment Area together and “Employment Area” shall be construed accordingly;
“Estate Management Company”	has the meaning at defined in Clause 1 in this Deed
“Fareham Common Multi User Link Works” “	the construction of a multi user link compliant with relevant engineering and inclusive mobility standards as shown indicatively coloured purple on plan 7328_103 Rev B and as agreed in accordance with any Highways Agreement;
“Fareham Leisure Centre Cycle Route Works”	the construction of a cycle route on Miller Drive and through Fareham Leisure Centre linking Maylings Farm Road to Park Lane as shown in principle on the plans 6091/SK/139 Rev C and 6091/SK/143 Rev D and as agreed in accordance with any Highways Agreement;
“Fareham Park Road/Wynton Way Cycle Improvement Works”	the works consisting of the provision of improvements to the local pedestrian and cycle route at the Fareham Park Road/Wynton Way junction as shown in principle on the plan 6091/SK/805 Rev B and as agreed in accordance with any Highways Agreement;
“First Phase”	the first phase of the A32 Hoads Hill Cycle Improvements Works which includes such works from the A32 Hoads Hill/A334 roundabout to Right of Way 87 and as agreed in accordance with any Highways Agreement;
“Fontley Road/Laveys Lane Works”	works to improve the provision of footway/cycleway routes on Fontley Road and Laveys Lane as shown in principle on the plans 6091/SK/806 Rev C and 6091/SK/142 Rev A and as agreed in accordance with any Highways Agreement;
“Funtley Road/Kiln Road Works”	improvement works involving the provision of on-carriageway cycle measures together with the narrowing to Funtley Road and Kiln Road as shown in principle on the plan 6091/SK/135 Rev A and as agreed in accordance with any Highways Agreement;
“Funtley Road Bridge Pedestrian and Cycle Scheme Works”	the construction of a footway and cycleway under Funtley Road Bridge and accompanying shuttle working as shown in principle

on the plans 6091/GA/362 Rev A and 6091/GA/360 Rev E and as agreed in accordance with any Highways Agreement;

"Highways Agreement"

any agreement or agreements required for the Highway Works to be entered into by the Owner (at the Owners expense) and the County Council pursuant to (inter alia) section 278 and/or section 38 and/or any other provision of the Highways Act 1980 in a form to be agreed by the County Council to provide for the execution of the Highways Works by the Owner at the Owner's expense and "Highways Agreements" shall be construed accordingly;

"Highway Safety Contribution"

the means the sum of £37,100 (index linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards safety improvement measures at the following locations:

- (e) works at A32 with A27 Delme Arms Roundabout as shown in principle on plan 6091/SK/702 Rev A;
- (f) works at Highlands Road as shown in principle on plan 6091/SK/710 Rev A;
- (g) works at A32/B2177/Bridge Street Junction as shown in principle on plan 6091/SK/700 Rev C;
- (h) works at B2177/Shoot Hill as shown in principle on the plans 6091/SK/1200 Rev B;
- (i) works at the junction of the A32 with Gosport Road as shown in principle on the plans 6091/SK/704 Rev A;

"Highway Works"

the Highway Works (in accordance with the Highways Agreements) listed here provided by the Owner at the Owner's expense in accordance with the provisions of paragraph 3 of this Schedule and "Highways Works" shall be construed accordingly:

A32 / Welborne Way Roundabout Works;

A32 / Knowle Road / Chalk Lane Roundabout Works;

A32 / Central Avenue Roundabout Works;

A32 / Central Avenue Left In/Left Out Works;

A32 / North Hill / Furze Court Works;

A32 Bus Link Works;

A32 Wickham Road Works;

A32 / Broadcut Roundabout Works;

A32 Hoads Hill / A334 Junction Works;

A32 Hoads Hill Cycle Improvements Works;

Maylings Farm Road / Arundel Drive / Grove Road Cycle Improvements Works;

Funtley Road Bridge Pedestrian and Cycle Scheme Works;

Funtley Road/Kiln Road Works;

Fareham Park Road/Wynton Way Cycle Improvement Works;

A32/Broadcut Roundabout & Standard Way Cycle Infrastructure Works;

Fontley Road/Laveys Lane Works;

A334 Winchester Road / The Square / Station Road Works;

A32 Old Turnpike Junction Alteration Works;

Fareham Leisure Centre Cycle Route Works "Fareham Common Multi User Link Works";

**"Highway Works
Completion Certificate
Standard"**

completion of the Highway Works to the reasonable satisfaction of the County Council as evidenced by the issue of a Certificate Of Completion for the Highway Works performed under a section 278 agreement or the issue of a Part 2 Certificate for Highway Works performed under a section 38 agreement;

"Highways Contribution"

the Highways Contributions (Index Linked) listed here to be paid by the Owner to the County Council in accordance with the provisions of paragraph 2 of this Schedule and "Highways Contributions" and "Highway Contribution" shall be construed accordingly:

A32 / A27 Delme Arms Roundabout Improvements Contribution;

A32 Pegasus Crossing Contribution;

A32 Toucan Crossing Contribution;

Highway Safety Contribution;

Kiln Road Toucan Crossing Contribution;

Kiln Road/North Hill/Old Turnpike/Park Lane Contribution;

Traffic Regulation Order Contribution;

Westbury Path Improvement Works Contribution;

Alternative Town Centre Cycle Route Contribution;

"Kiln Road Toucan Crossing Contribution"	the sum of £130,000 (ONE HUNDRED AND THIRTY THOUSAND POUNDS) (Index Linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards the provision of a toucan crossing at Kiln Road as shown in principle on plan 6091/SK/124 Rev C;
"Kiln Road/North Hill/Old Turnpike/Park Lane Contribution"	the sum of £710,000 (SEVEN HUNDRED AND TEN THOUSAND POUNDS) (Index Linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards geometric alterations and improvement works on Kiln Road and North Hill and Old Turnpike to facilitate traffic flow as shown in principle on plan 6091/SK/145 Rev C;
"Land Use Plan"	has the meaning at defined in Clause 1 in this Deed
"Maylings Farm Road/ Arundel Drive/Grove Road Cycle Improvements Works"	the works consisting of the provision of improvements to the local cycle route between Kiln Road toucan crossing and Fareham Rail Station as shown in principle on the plans 6091/SK/102 Rev C, 6091/SK/124 Rev C and 6091/SK/125 Rev C and as agreed in accordance with any Highways Agreement;
"Monitor and Review Regime"	the written details dated 11 November 2020 produced by WSP at Appendix 12 that provides the methodology for the review of the operation of junctions named within the Monitor and Review Regime;
"Monitor and Review Report "	a written report provided by the Owner at the Owners expense to the County Council such report or reports to be in accordance with the Monitor and Review Regime and "Monitor and Review Reports" shall be construed accordingly;
"Part 2 Certificate"	a certificate issued by the County Council confirming the Highway Works have been executed to its satisfaction and can be placed on maintenance;
"Perpetuity"	has the same meaning as defined at Clause 1
"Practical Completion"	has the same meaning as defined at Clause 1
"Reserved Matter Application Area"	has the meaning as defined at clause 1
"Right of Way 87"	the public right of way numbered 87 as shown on plan number 6091/SK/106 Rev E as appended to this Deed at Appendix 4
"Second Phase"	the second phase of the A32 Hoads Hill Cycle Improvements Works which includes such works by the Owner (at the Owners expense) from Right of Way 87 to the A32/Welborne Way Roundabout Works (including shared use provision to tie into the existing A32 shared use provision north of Knowle Roundabout) and as agreed in accordance with any Highways Agreement;

"Traffic Regulation Order"	Traffic Regulation Orders required for the Development made under the provisions of the Road Traffic Regulation Act 1984 and Traffic Regulation Orders shall be construed accordingly and "Traffic Regulations Orders" shall be construed accordingly;
"Traffic Regulation Order Contribution"	the sum of £27,000 (TWENTY SEVEN THOUSAND) (Index Linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards Traffic Regulation Orders;
"Welborne Way (Knowle Road to Broadway) Works"	the works consisting of the provision of a vehicular link between Knowle Road and Broadway (to include the construction of Welborne Way and the construction of a junction at Knowle Road and the construction of the vehicular link to Broadway) as shown in principle on plan 7328_104 Rev D and as agreed in accordance with any Highways Agreement;
"Welborne Sports Hub"	has the meaning at defined in Clause 1 in this Deed;
"Western Employment Area"	has the same meaning as in Clause 1 of this Deed;
"Westbury Path Improvement Works Contribution"	the sum of £30,096 (THIRTY THOUSAND AND NINETY SIX POUNDS) (Index Linked) payable by the Owner to the County Council in accordance with the provisions of this Schedule towards the provision of improvements by way of cycle amendments to Westbury Path (to include the securing of cycle rights) as shown in principle on plan 6091-SK-1320 Rev A;
"Unadopted Roads"	the roads within the Development which are not Adopted Roads or shall not become Adopted Roads before Practical Completion;
"Unregistered"	relating to land, the title and ownership of, which has not been formally registered with HM Land Registry;

2 LOCAL HIGHWAY WORKS CONTRIBUTION

- 2.1 The Owner covenants that prior to the Occupation of 100 Residential Units:
- 2.1.1 to pay the A32 / A27 Delme Arms Roundabout Improvements Contribution to the County Council; and
 - 2.1.2 not to Occupy or permit Occupation of more than 100 Residential Units unless and until the A32 / A27 Delme Arms Roundabout Improvements Contribution has been paid to the County Council.
- 2.2 The Owner covenants to pay the A32 Pegasus Crossing Contribution to the County Council on the earlier of the following occurrences:

- 2.2.1 the submission of the S278 works for the A32 / Knowle Road / Chalk Lane Roundabout Works or;
 - 2.2.2 submission of the S278 works for the A32 / Central Avenue Roundabout Works.
- 2.3 The Owner covenants to pay the A32 Toucan Crossing Contribution to the County Council on the earlier of the following occurrences:
- 2.3.1 submission of the S278 works for either A32/Knowle Roundabout/Chalk Lane Roundabout Works; or
 - 2.3.2 submission of the S278 works for the A32/Central Avenue Roundabout Works.
 - 2.3.3 in the event the Owner does not deliver the Additional Works as part of the A32/ Central Avenue Left In/Left Out Works the Owner covenants to pay the County Council such portion of the A32 Toucan Crossing Contribution as is required within 14 days of any request (such request not to be made by the County Council prior to the Occupation of 1000 Residential Units) and the Owner shall not Occupy any further Residential Units unless and until any payment has been made pursuant to this paragraph
 - 2.3.4 if a request for payment is made by the County Council pursuant to paragraph 2.3.3 prior to the occurrences at paragraphs 2.3.1 and 2.3.2 the Owner covenants that any remaining balance of the A32 Toucan Crossing Contribution shall be paid in accordance with the provisions of paragraph 2.3
- 2.4 The Owner covenants that prior to the Occupation of 500 Residential Units:
- 2.4.1 to pay the Highway Safety Contribution to the County Council; and
 - 2.4.2 not to Occupy or permit Occupation of more than 500 Residential Units unless and until the Highway Safety Contribution has been paid to the County Council as aforesaid.
- 2.5 The Owner covenants that prior to the Occupation of 500 Residential Units:
- 2.5.1 to pay the Kiln Road Toucan Crossing Contribution to the County Council; and
 - 2.5.2 not to Occupy or permit Occupation of more than 500 Residential Units unless and until the Kiln Road Toucan Crossing Contribution has been paid to the County Council as aforesaid.
- 2.6 The Owner covenants that prior to the Occupation of 3,500 Residential Units:
- 2.6.1 to pay the Kiln Road/North Hill/Old Turnpike/Park Lane Contribution to the County Council; and
 - 2.6.2 not to Occupy or permit Occupation of more than 3,500 Residential Units unless and until the Kiln Road/North Hill/Old Turnpike/Park Lane Contribution has been paid to the County Council as aforesaid.
- 2.7 the Owner covenants that prior to the Occupation of 500 Residential Units:
- 2.7.1 to pay the Westbury Path Improvement Works Contribution to the County Council; and

- 2.7.2 not to Occupy or permit Occupation of more than 500 Residential Units unless and until the Westbury Path Improvement Works Contribution has been paid to the County Council as aforesaid.
- 2.8 If following the receipt of the Westbury Path Improvement Works Contribution the County Council is unable to secure cycle rights on Westbury Path the County Council will notify the Owner in writing of the same and the Owner further covenants
- 2.8.1 to also pay the Alternative Town Centre Cycle Route Contribution within 21 Working Days of the written notification by the County Council that it has failed to secure the cycle rights and the Owner covenants to pay the Alternative Town Centre Cycle Route Contribution in the event the County Council is unable to secure cycle rights on Westbury Path.
- 2.9 the Owner covenants that prior to the Occupation of 100 Residential Units:
- 2.9.1 to pay the Traffic Regulation Order Contribution to the County Council; and;
- 2.9.2 not to Occupy or permit Occupation of more than 100 Residential Units unless and until the Traffic Regulation Order Contribution has been paid to the County Council as aforesaid.
- 2.10 If prior to the receipt of any Highways Contribution payable pursuant to the terms of this Deed the County Council incurs any expenditure in relation to such Highway Works to which the Highways Contribution was intended to apply (or in consequence of arranging for the provision thereof) by the letting of a contract or otherwise including any design costs whether in anticipation of or as a result of the Development then the County Council may immediately following receipt of such Highway Contribution (and upon provision of evidence of the expenditure) deduct there from a sum equivalent to such expenditure incurred and for the avoidance of doubt it is hereby further agreed that such proportion of any such Highway Contribution shall not be the subject of any requirement to repay or account for it or any interest accrued thereon pursuant to the terms of this Deed and that such monies shall be and remain the property of the County Council and shall not be bound by the terms of this Deed.

3 HIGHWAY WORKS

- 3.1 The Owner covenants to carry out and complete the A32/Broadcut Roundabout & Standard Way Cycle Infrastructure Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:
- 3.1.1 the Occupation of any Residential Unit in Area A or Area B; or
- 3.1.2 the opening of the Welborne Sports Hub (or any part thereof) to the public; and
- 3.1.3 not to Occupy or permit Occupation of any Residential Unit in Area A or Area B unless and until the A32/Broadcut Roundabout & Standard Way Cycle Infrastructure Works are completed to Highway Works Completion Certificate Standard and further;
- 3.1.4 should the Welborne Sports Hub (or any part thereof) open to the public prior to the Occupation of any Residential Unit in Area A or Area B the Owner covenants not to Occupy or permit Occupation of any further Residential Unit unless and until the A32 / Broadcut Roundabout & Standard Way Cycle Infrastructure Works Welborne are completed to Highway Works Completion Certificate Standard.

- 3.2 The Owner covenants to carry out and complete the A32/Broadcut Roundabout Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:
- 3.2.1 the Occupation of 750 Residential Units; or
 - 3.2.2 the date which is three months from the date of the opening of the M27 Junction 10 Improvement Works (or any part thereof) for use by the public; and
 - 3.2.3 not to Occupy or permit Occupation of more than 750 Residential Units unless and until the A32/Broadcut Roundabout Works are completed to Highway Works Completion Certificate Standard; and
 - 3.2.4 should the M27 Junction 10 Improvement Works (or any part thereof) open to the public prior to the Occupation of 750 Residential Units and the three month period referred to in paragraph 3.2.2 has expired the Owner covenants not to Occupy or permit Occupation of any further Residential Unit unless and until the A32/Broadcut Roundabout Works are completed to Highway Works Completion Certificate Standard.
- 3.3 The Owner covenants to carry out and complete the A32/Central Avenue Left In/Left Out Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:
- 3.3.1 the Occupation of 710 Residential Units; or
 - 3.3.2 the closure of Pook Lane; and
 - 3.3.3 not to Occupy or permit Occupation of more than 710 Residential Units unless and until the A32/Central Avenue Left In/Left Out Works are completed to Highway Works Completion Certificate Standard and further;
 - 3.3.4 should Pook Lane close prior to the Occupation 710 Residential Units the Owner covenants not to Occupy or permit Occupation of any further Residential Unit unless and until the A32/ Central Avenue Left In/Left Out Works are completed to Highway Works Completion Certificate Standard.
 - 3.3.5 For the avoidance of doubt the Owner's obligation to carry out and complete the A32/Central Avenue Left In/Left Out Works shall remain in the event an early payment is made to the County Council pursuant to paragraph 2.3.3
- 3.4 The Owner covenants to carry out and complete the A32 / Central Avenue Roundabout Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:
- 3.4.1 the Occupation of any Residential Unit in Area A to the east of the A32; or
 - 3.4.2 the Occupation of any Residential Unit in Area B to the east of the A32; or
 - 3.4.3 the Occupation of 3,360 Residential Units;
 - 3.4.4 the Owner shall not Occupy or permit Occupation of any Residential Unit in Area A to the east of the A32 or shall not Occupy or permit Occupation of any Residential Unit in Area B to the east of the A32 or shall not Occupy or permit Occupation of more than 3,360 Residential Units unless and until the A32 /

Central Avenue Roundabout Works are completed to Highway Works Completion Certificate Standard; and

3.4.5 and for the avoidance of doubt the above triggers are subject to any requirements regarding access to the District Centre Primary School Site and the District Centre Secondary School Site as agreed in writing between the Owner and the County Council acting in its capacity as the local education authority.

3.5 The Owner covenants to deliver the A32 Hoads Hill Cycle Improvements Works to Highway Works Completion Certificate Standard in two phases as set out below:

3.5.1 to carry out and complete the First Phase of the A32 Hoads Hill Cycle Improvements Works to Highway Works Completion Certificate Standard at its own expense prior to the Occupation of 1160 Residential Units; and

3.5.2 not to Occupy or permit Occupation of more than 1160 Residential Units unless and until the First Phase of the A32 Hoads Hill Cycle Improvements Works are completed to Highway Works Completion Certificate Standard;

3.5.3 to carry out and complete the Second Phase of the A32 Hoads Hill Cycle Improvements Works to Highway Works Completion Certificate Standard at its own expense prior to the earlier of the following occurrences:

(a) the Occupation of 2601 Residential Units; or

(b) completion of the A32/Welborne Way Roundabout Works to Highway Works Completion Certificate Standard; and

3.5.4 not to Occupy or permit Occupation of more than 2601 Residential Units unless and until the A32 Hoads Hill Cycle Improvements Works are completed to Highway Works Completion Certificate Standard and further;

3.5.5 should the A32/Welborne Way Roundabout Works be completed to Highway Works Completion Certificate Standard prior to the Occupation of 2601 Residential Units the Owner covenants not to Occupy or permit Occupation of any further Residential Unit unless and until the Second Phase of the A32 Hoads Hill Cycle Improvements Works are completed to Highway Works Completion Certificate Standard

3.6 The Owner covenants to carry out and complete the A32/Knowle Road/Chalk Lane Roundabout Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:

3.6.1 the Occupation of any Residential Unit in Area A to the east of the A32; or

3.6.2 the opening to the public of the Allotments (or any part thereof); and

3.6.3 not to Occupy or permit Occupation of any Residential Unit in Area A to the east of the A32 unless and until the A32/Knowle Road/Chalk Lane Roundabout Works are completed to Highway Works Completion Certificate Standard and further;

3.6.4 should the Allotments (or any part thereof) open to public occur prior to the Occupation of any Residential Unit in Area A to the east of the A32 the Owner

covenants not to Occupy or permit Occupation of any further Residential Unit unless and until the A32 / Knowle Road / Chalk Lane Roundabout Works are completed to Highway Works Completion Certificate Standard.

- 3.7 The Owner covenants to carry out and complete the A32/North Hill/Furze Court Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:
- 3.7.1 the Occupation of 1160 Residential Units; or
 - 3.7.2 at the point the M27 Junction 10 Improvement Works (or any part thereof) are open for use by the public; and
 - 3.7.3 not to Occupy or permit Occupation of more than 1160 Residential Units unless and until the A32/North Hill/Furze Court Works are completed to Highway Works Completion Certificate Standard and further;
 - 3.7.4 should the M27 Junction 10 Improvement Works (or any part thereof) open to the public prior to the Occupation of Occupation of 1160 Residential Units the Owner covenants not to Occupy or permit Occupation of any further Residential Unit unless and until the A32/North Hill/Furze Court Works are completed to Highway Works Completion Certificate Standard.
- 3.8 The Owner covenants to carry out and complete the A32/Welborne Way Roundabout Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 2601 Residential Units and;
- 3.8.1 not to Occupy or permit Occupation of more than 2601 Residential Units unless and until the A32/Welborne Way Roundabout Works are completed to Highway Works Completion Certificate Standard unless the County Council in its absolute discretion confirms in writing to the Owner that the triggers pursuant to paragraphs 3.23 to 3.31 inclusive of this Schedule apply.
- 3.9 The Owner covenants to carry out and complete the A32 Bus Link Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:
- 3.9.1 the first Occupation of the Eastern Employment Area; or
 - 3.9.2 the Occupation of 3000 Residential Units; and
 - 3.9.3 not to Occupy or permit first Occupation of the Eastern Employment Area and not to Occupy or permit Occupation of more than 3000 Residential Units (whichever trigger pursuant to paragraph 3.9 occurs first) unless and until the A32 Bus Link Works are completed to Highway Works Completion Certificate Standard.
- 3.10 The Owner covenants to carry out and complete the A32 Hoads Hill / A334 Junction Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 1160 Residential Units and;
- 3.11 not to Occupy or permit Occupation of more than 1160 Residential Units unless and until A32 Hoads Hill / A334 Junction Works are completed to Highway Works Completion Certificate Standard.

- 3.12 The Owner covenants to carry out and complete the A32 Old Turnpike Junction Alteration Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 1160 Residential Units and;
- 3.12.1 not to Occupy or permit Occupation of more than 1160 Residential Units unless and until the A32 Old Turnpike Junction Alteration Works are completed to Highway Works Completion Certificate Standard.
- 3.13 The Owner covenants to carry out and complete the A32 Wickham Road Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 100 Residential Units and;
- 3.13.1 not to Occupy or permit Occupation of more than 100 Residential Units unless and until the A32 Wickham Road Works are completed to Highway Works Completion Certificate Standard.
- 3.14 The Owner covenants to carry out and complete the A334 Winchester Road / The Square / Station Road Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 500 Residential Units and;
- 3.14.1 not to Occupy or permit Occupation of more than 500 Residential Units unless and until the A334 Winchester Road / The Square / Station Road Works are completed to Highway Works Completion Certificate Standard.
- 3.15 The Owner covenants to carry out and complete the Fareham Leisure Centre Cycle Route Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 500 Residential Units and
- 3.15.1 not to Occupy or permit Occupation of more than 500 Residential Units unless and until the Fareham Leisure Centre Cycle Route Works are completed to Highway Works Completion Certificate Standard.
- 3.16 The Owner covenants to carry out and complete the Fareham Park Road/Wynton Way Cycle Improvement Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 500 Residential Units and;
- 3.16.1 not to Occupy or permit Occupation of more than 500 Residential Units unless and until the Fareham Park Road/Wynton Way Cycle Improvement Works are completed to Highway Works Completion Certificate Standard.
- 3.17 The Owner covenants to carry out and complete the Fontley Road/Laveys Lane Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 5000 Residential Units and;
- 3.17.1 not to Occupy or permit Occupation of more than 5000 Residential Units unless and until the Fontley Road/Laveys Lane Works are completed to Highway Works Completion Certificate Standard.
- 3.18 The Owner covenants to carry out and complete the Funtley Road/Kiln Road Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 500 Residential Units and;
- 3.18.1 not to Occupy or permit Occupation of more than 500 Residential Units unless and until the Funtley Road/Kiln Road Works are completed to Highway Works Completion Certificate Standard.

- 3.19 The Owner covenants to carry out and complete the Funtley Road Bridge Pedestrian and Cycle Scheme Works at its own expense to Highway Works Completion Certificate Standard prior to first Occupation of any Residential Unit and;
- 3.19.1 not to Occupy or permit first Occupation of any Residential Unit unless and until the Funtley Road Bridge Pedestrian and Cycle Scheme Works are completed to Highway Works Completion Certificate Standard.
- 3.20 The Owner covenants to carry out and complete the Maylings Farm Road/Arundel Drive/Grove Road Cycle Improvements Works at its own expense to Highway Works Completion Certificate Standard prior to the Occupation of 500 Residential Units and
- 3.20.1 not to Occupy or permit Occupation of more than 500 Residential Units unless and until the Maylings Farm Road/Arundel Drive/Grove Road Cycle Improvements Works are completed to Highway Works Completion Certificate Standard.
- 3.21 The Owner covenants to carry out and complete the Welborne Way (Knowle Road to Broadway) Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:
- 3.21.1 Occupation of 1851 Residential Units within Area X; or
- 3.21.2 Occupation of any Residential Unit or Commercial Unit within Area Y; or
- 3.21.3 More than 25% Occupation of any land use with the Employment Area; and
- 3.21.4 not Occupy or permit Occupation of 1851 Residential Units within Area X and not to Occupy or permit Occupation of Occupation of any Residential Unit within Area Y and not to Occupy or permit Occupation of more than 25% of any land use with the Employment Area (whichever trigger pursuant to paragraph 3.21 occurs first) unless and until the Welborne Way (Knowle Road to Broadway) Works are completed to Highway Works Completion Certificate Standard unless the County Council in its absolute discretion confirms in writing to the Owner that the triggers pursuant to paragraphs 3.23 to 3.31 inclusive of this Schedule apply.
- 3.22 The Owner covenants to carry out and complete the Fareham Common Multi User Link Works at its own expense to Highway Works Completion Certificate Standard prior to the earlier of the following occurrences:
- 3.22.1 the Occupation of 1160 Residential Units; or
- 3.22.2 within 1 calendar month of the M27 Junction 10 Improvement Works (or any part thereof) being open for use by the public; and
- 3.22.3 not Occupy or permit Occupation of more than 1160 Residential Units unless and until the Fareham Common Multi User Link Works are completed to Highway Works Completion Certificate Standard;
- 3.22.4 should the M27 Junction 10 Improvement Works (or any part thereof) open to the public prior to the Occupation of Occupation of 1160 Residential Units the Owner covenants not to Occupy or permit Occupation of any further Residential Unit unless and until the Fareham Common Multi User Link Works are completed to Highway Works Completion Certificate Standard.

- 3.23 The Owner covenants that within three months of the Occupation of 1160 Residential Units it shall submit to the County Council for approval the Monitor and Review Report which shall identify whether the Welborne Way (Knowle Road to Broadway) Works and/or the A32/Welborne Way Roundabout Works shall be delivered by the Owner prior to the agreed trigger point within this Schedule for the Welborne Way (Knowle Road to Broadway) Works and/or the A32 / Welborne Way Roundabout Works and the Owner shall not Occupy or permit any further Occupation of any Residential Unit unless and until the Monitor and Review Report has been submitted to the County Council for approval.
- 3.24 As soon as reasonably practicable following receipt of the Monitor and Review Report the County Council shall confirm in writing (such confirmation not to be unreasonably withheld or delayed) to the Owner that the trigger point for Welborne Way (Knowle Road to Broadway) Works and/or the A32/Welborne Way Roundabout Works within this Schedule are still valid and remain in full force.
- 3.25 Thereafter any subsequent Monitor and Review Report shall be submitted by the Owner on each anniversary of the receipt of the last Monitor and Review Report and on each occasion following receipt of the Monitor and Review Report the County Council will determine in its absolute discretion (acting reasonably) whether the agreed trigger points for Welborne Way (Knowle Road to Broadway) Works and/or the A32/Welborne Way Roundabout Works within this Schedule are still valid and remain in full force PROVIDED THAT;
- 3.25.1 if at any time following submission of the Monitor and Review Report the County Council determines in writing ("the Written Confirmation") that the Ratio to Flow to Capacity "the RFC Value" exceeds 0.75 on any one arm of the Knowle Road Roundabout or the RFC Value exceeds 0.75 on any one arm Broadway Roundabout and therefore the trigger point within this Schedule for Welborne Way (Knowle Road to Broadway) Works is not valid the Owner shall undertake and complete the Highway Works namely the Welborne Way (Knowle Road to Broadway) Works within 12 months of the date of the Written Confirmation pursuant to this paragraph.
- 3.26 The Owner covenants not to Occupy or permit Occupation of any Residential Unit from 12 months after the date of the Written Confirmation pursuant to paragraph 3.25.1 unless and until the Welborne Way (Knowle Road to Broadway) Works have been completed to Highway Works Completion Certificate Standard (unless otherwise agreed in writing by the County Council).
- 3.27 Following the completion of the Welborne Way (Knowle Road to Broadway) Works pursuant to paragraph 3.26 above the Owner shall continue to submit the Monitor and Review Report to the County Council for approval which shall identify whether the A32 / Welborne Way Roundabout Works shall be delivered by the Owner prior to the agreed trigger point within this Schedule and the Owner shall not Occupy or permit any further Occupation of any Residential Unit unless and until the Monitor and Review Report has been submitted to the County Council for approval and;
- 3.27.1 as soon as reasonably practicable following receipt of the Monitor and Review Report the County Council shall confirm in writing (such confirmation not to be unreasonably withheld or delayed) to the Owner that the trigger point for the A32/Welborne Way Roundabout Works within this Schedule are still valid and remain in full force.
- 3.28 Thereafter any subsequent Monitor and Review Report shall be submitted by the Owner on each anniversary of the receipt of the last Monitor and Review Report and on each occasion following receipt of the Monitor and Review Report the County Council will determine in its

absolute discretion (acting reasonably) whether the agreed trigger point for the A32/Welborne Way Roundabout Works within this Schedule are still valid and remain in full force PROVIDED THAT if at any time following submission of the Monitor and Review Report the County Council provides ("the Written Confirmation") that:

- 3.28.1 the RFC Value exceeds 0.75 on any one arm of A32/Knowle Road/Chalk Lane Roundabout; or
 - 3.28.2 the RFC Value exceeds 0.75 on any one arm of the junction of Knowle Road/Welborne Way; or
 - 3.28.3 the RFC Value exceeds 0.75 on any one arm of the A32/Broadway Roundabout; and
 - 3.28.4 therefore the trigger point within this Schedule for the A32 / Welborne Way Roundabout Works is not valid the Owner shall undertake and complete the Highway Works namely the A32 / Welborne Way Roundabout Works within 6 months of the date of the Written Confirmation pursuant to this paragraph.
- 3.29 The Owner covenants not to Occupy or permit Occupation of any Residential Unit from 6 months of the date of the Written Confirmation pursuant to paragraph 3.28.4 unless and until the Owner has commenced the A32 / Welborne Way Roundabout Works.
- 3.30 To ensure the Highway Works namely A32 / Welborne Way Roundabout Works can be implemented and constructed in a timely manner the Owner shall submit a section 278 preliminary design check for the Highway Works namely A32 / Welborne Way Roundabout Works prior to the Occupation of 700 Residential Units and shall not Occupy or permit Occupation of more than 700 Residential Units unless and until the section 278 preliminary design check for the Highway Works namely A32 / Welborne Way Roundabout Works has been submitted
- 3.31 Following the submission of the section 278 preliminary design check for the Highway Works namely A32 / Welborne Way Roundabout Works pursuant to paragraph 3.30 above the Owner shall thereafter obtain technical approval for the Highway Works namely A32 / Welborne Way Roundabout Works from the County Council prior to Occupation of 1160 Units and shall not Occupy or permit Occupation of more than 1160 Residential Units unless the Owner has obtained technical approval for the A32 / Welborne Way Roundabout Works.
- 3.32 The Owner covenants to the County Council that:
- 3.32.1 the Highway Works shall be in accordance with the drawings referred within the Highway Works as defined in paragraph 1 of this Schedule and attached to this Deed; and
 - 3.32.2 the Owner shall undertake and complete all Highway Works to Highway Works Completion Certificate Standard.
- 3.33 The Owner covenants that in the event that any part of the Highway Works fall within Unregistered land the Owner shall undertake and complete such Highway Works and upon completion of the said works to Highway Works Completion Certificate Standard the County Council shall engage the process set out in section 228 of the Highways Act 1980 ("**Section 228**") with a view to adopting the said Highway Works carried out on the Unregistered part of the land as a highway maintainable at public expense and assuming that no objections in accordance with Section 228 are lodged with the County Council, will upon completion of the Section 228 process, adopt the said unregistered land as public highway maintainable at the

public expense ("**New Adopted Highway**") with the cost of such Section 228 process being borne by the Owner and FOR THE AVOIDANCE OF DOUBT the costs of maintaining any New Adopted Highway shall be borne by the County Council following the expiry on the period of one calendar month from the date of first advertisement of the notice of adoption required under Section 228.

- 3.34 Where any objections are made within the meaning of Section 228, the County Council may if in its discretion (acting reasonably) it considers reasonable and appropriate to do so, formally contest such objections pursuant to the processes set out in Section 228 PROVIDED ALWAYS that this shall be at the expense of the Owner and if the County Council does not contest such objections or is unable or is unsuccessful in contesting such objections and the Owner is consequently obliged (whether as a result of a magistrates' court order or the order or judgment of a higher court or an appeal court) to remove the said works from the Unregistered part of the land, the Owners will reinstate the highway to its original condition at its own expense instead or carry out the alternative works as agreed by the County Council.

4 INTERNAL ROADS

The Owner covenants:

- 4.1 not to Commence Development or allow Commencement of Development of a Reserved Matters Application unless and until the Owner has submitted an application for technical approval which shall include but not be limited to:
- 4.1.1 detail of the extent of the Adoption pursuant to section 38 Highways Act 1980 to the County Council in respect of the Adopted Roads within the Development which for the avoidance of doubt shall include a minimum of 0.5 metres from the front face of the kerb either side of the carriageway and in the event it does not include this the Owner shall grant an easement to the County Council for all purposes necessary to allow the County Council to discharge its statutory function together with the adjacent footway and associated landscaping/grass areas which may also be adopted by the County Council under s.38 Highways Act 1980 unless the Owner determines (acting reasonably) that the adjacent footway and associated landscaping within the Adopted Road shall be removed from adoption and such decision to remove will be made by mutual written agreement between the Owner and County Council subject to the County Council having regard to its statutory function as local highway authority and accordingly the discharge of its statutory duty; and
 - 4.1.2 any easement reasonably required by the County Council for the purposes of such Adoption.
- 4.2 Not to Occupy or permit Occupation of more than 50% of the Residential Units abutting an Adopted Road unless and until the Owner has submitted and completed a Highways Agreement at its own expense pursuant to section 38 Highways Act in respect of the technical approval submitted in accordance with the provisions of paragraph 5.3 in relation to the Adoption of Adoptable Roads within the Development.
- 4.3 To maintain at its own expense any footways and/or trees and/or hedges and/or shrubs or any such landscaping (as required by the County Council) on the Adopted Roads where paragraph 4.4 does not apply and the Unadopted Roads.
- 4.4 Where the County Council does Adopt footways and/or trees and/or hedges and/or shrubs or any such landscaping on the Adopted Roads (to be decided in agreement with the Owner) the

Owner covenants to pay such commuted sums towards the provision of their maintenance using rates set in the most recently published commuted sums policy guidance at the date of the Adoption and the County Council shall be at liberty to delay the issue of the Adoption Certificate until such time the commuted sums are paid in full;

- 4.5 In the event the Owner fails to maintain the footways and/or trees and/or hedges and/or shrubs or grass any such landscaping pursuant to paragraph 4.3 above or Paragraph 4.4 does not apply the County Council will notify the Owner or WGVTL (who will be joint and severally liable for any failure with the Owner) of the failure and determine the sum required by the County Council using rates set in the most recently published commuted sums policy guidance at the date of the breach required by the County Council to maintain the trees and/or hedges and/or shrubs or grass or any such landscaping and no further Residential Units within the Development shall be Occupied unless and until the sum due pursuant to this paragraph is paid in full to the County Council and for the avoidance of doubt no sums will be due in the event the County Council does not find a failure to maintain any footways and/or trees and/or hedges and/or shrubs or grass or any such landscaping.
- 4.6 To enter into (and complete) at its own expense a licence agreement pursuant to s.142 Highways Act 1980 in respect of any Section 38 Agreement completed pursuant to the provisions of paragraph 4.2 where the Owner and/or WGVTL have planted trees and/or hedges and/or shrubs or grass or any such landscaping and the Highway Authority determines requires a licence agreement pursuant to s.142 Highways Act 1980 and further the County Council shall be at liberty to delay the issue of the Adoption Certificate until such time the licence agreement is completed pursuant to s.142 Highways Act 1980.
- 4.7 If in the opinion of the County Council (acting reasonably) the Owner and/or WGVTL fail to comply with any terms of the licence agreement completed pursuant to paragraph 4.6 of this Schedule then the County Council without prejudice to its powers under the Highways Act 1980 and under the provisions of this Schedule has the right to remove any trees and/or hedges and/or shrubs or grass or any such landscaping on the Adopted areas within the Adopted Roads and recover all associated costs from the Owner and/or WGVTL and such costs shall be paid by the Owner and/or WGVTL within 14 working days.
- 4.8 To register or note all licence agreements under s.142 Highways Act entered into pursuant to paragraph 4.6 above with HM Land Registry on the respective titles referred to within the s.142 licence within 1 month from completion or pay the reasonable costs of the County Council in the notification of each licence agreement pursuant to s.142 Highways Act.
- 4.9 To pay the legal costs of the County Council in negotiating and entering into each licence agreement pursuant to s.142 Highways Act 1980.
- 4.10 In the event any roads within the Development remain Unadopted Roads by Practical Completion of the Development such Unadopted Roads shall be transferred to the Estate Management Company prior to Practical Completion of the Development to be maintained in Perpetuity for use by public and allow members of the public to use the Unadopted Roads at all times and for all purposes in Perpetuity.

5 DEDICATION OF LAND

The Owner covenants

- 5.1 to dedicate any part of the Land within the Owner's title as required by the County Council for the purposes of the M27 Junction 10 Improvement Works as highway proposed to be maintainable at the public expense and to enter into a deed of dedication (for nil consideration) with the County Council (at the Owner's expense) to dedicate such part of the Land as highway proposed to be maintainable at the public expense if called upon to do so by the County Council
- 5.2 to dedicate any part of the Land within the Owner's title as agreed in writing with the County Council as highway proposed to be maintainable at the public expense and to enter into a deed of dedication with the County Council (at the Owner's expense) to dedicate such part of the Land as highway proposed to be maintainable at the public expense if requested to do so by the County Council and agreed to by the Owner
- 5.3 if required by Highways England to transfer any part of the Land within the Owner's title as required by County Council and/or Highways England for the purposes of the M27 Junction 10 Improvement Works as highway proposed to be maintainable at the public expense and to enter into a contract and/or transfer as required (for nil consideration) with Highways England (at the Owners expense) to transfer such part of the Land to Highways England as highway proposed to be maintainable at the public expense if called upon to do so by the County Council and/or Highways England
- 5.4 where necessary to make available any part of the Land within the Owner's title required for or in connection with any Highway Works (to include the M27 Junction 10 Improvement Works where relevant) including but not limited rights to use temporary working space and access and a site compound subject always to the County Council entering into any necessary licences with the Owner.

6 COUNTY COUNCIL COVENANTS

- 6.1 The County Council covenants with the Owner that where any details are submitted to it pursuant to this Schedule for its approval it shall act reasonably in the consideration of those details and that it shall not unreasonably withhold approval of those details in any event provided all necessary details have been submitted for the approval of the County Council
- 6.2 The County Council covenants with the County Council that where any Highways Contribution is paid to it pursuant to this Schedule it shall use that contribution for the purpose that it was paid as stated in this Deed and for no other purpose.
- 6.3 To the extent that any Highway Contribution or any part thereof remains unspent or is not unconditionally committed to be spent at the end of the period of fifteen (15) years from the date of receipt of the relevant Highway Contribution and upon written request of the person who made the payment the County Council shall refund to the person who made the payment any part of the Contribution which has not been spent or is not unconditionally committed to be spent together with interest on the unexpended part of the relevant Highway Contribution.
- 6.4 The County Council agrees with the Owner that where any obligation in this Schedule refers to a specific drawing or plan, that plan or drawing may be substituted for a plan or drawing that is substantially in accordance with the referenced plan or drawing where it is agreed between the parties to reflect such design changes as may be agreed in writing with the County Council SAVE that the County Council decision will be final.

SCHEDULE 9

Waste and Recycling

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“Access”	the provision of roads, footpaths, cycle ways, cycle routes, cycle paths and cycle tracks to a standard approved by the County Council together with all rights and easements over the said roads, footpaths and cycle ways as are necessary to facilitate construction and Occupation of the Development or part thereof until such aforesaid roads, footpaths, ways, routes, tracks are adopted as public highway;
“Clean Condition”	free from any contamination existing buildings associated redundant features foundations and services which would limit prevent or restrict the development and use of the Household Waste and Recycling Centre for its intended purpose (to the reasonable satisfaction of the County Council as evidenced in writing) and the mitigation measures and recommendations detailed in any Environmental Statement together with any environmental contamination remediation scheme reasonably required by the County Council have been carried out to the County Council’s satisfaction;
“Employment Uses”	those parts of the Development which shall be used within use classes B2, B8 and E as detailed in the Application;
“Household Waste and Recycling Centre”	a facility for the recycling of household waste of appropriate design and which shall not adversely affect Residential Units;
“Household Waste and Recycling Centre Land”	circa 0.8 hectares of land at a location to be agreed between the Owner and the County Council which: <ul style="list-style-type: none">• is suitable for a split-level facility (for the avoidance of doubt the County Council will be responsible for levelling the site to create the required specification for the facility);• has direct access to the public highway avoiding impact on the A32 or the M27 Junction 10;• is not within 110 metres of any residential building within Funtley Village or directly adjacent to Residential Units;
“Household Waste and Recycling Centre Contribution”	the sum of £180,000 (one hundred and eighty thousand pounds) to be used by the County Council towards the provision of a Household Waste and Recycling Centre on the Household Waste and Recycling Centre Land or a location Off-Site as agreed with the County Council;

“Off-Site”	a location outside the Land;
“Services”	<p>the provision to the relevant boundary of any land or building within the Site at points and locations to be agreed with the County Council as appropriate of such of the items referred to in paragraphs (a) and (b) and (c) below which shall be necessary to enable any land or building on the Household Waste and Recycling Centre Land to function for the use permitted all of which items referred to in paragraphs (a) and (b) and (c) below shall have adequate capacity to serve the Household Waste and Recycling Centre:</p> <p>(a) the apparatus required to facilitate the mains supply of adequate capacity and connection of water, electricity, telephone and broadband communications;</p> <p>(b) foul drainage system of a sufficient capacity to be agreed with the County Council ready for use and which has an appropriately sized connection;</p> <p>(c) surface water drainage outfalling from on-plot sustainable drainage systems constructed by the County Council providing the necessary attenuation and water quality treatment measures as required by the local flood authority (or the Environment Agency in the instance of effluent requiring an Environmental permit) to a surface water sewer or watercourse which abuts Household Waste and Recycling Centre Land at the time of transfer of the Household Waste and Recycling Centre Land to the County Council such sewer or system constructed to a standard in force at the time of provision agreed with the relevant authority as the case may be AND FOR THE AVOIDANCE OF DOUBT surface water drainage discharge points will not be provided in the event the Household Waste and Recycling Centre Land is suitable for on-site infiltration in accordance with Environment Agency Guidance, the Building Regulations and CIRIA C156;</p>
“Transfer Date”	the date the transfer of the Household Waste and Recycling Centre Land from the Owner to the County Council is completed.

2 HOUSEHOLD WASTE AND RECYCLING CENTRE LAND

- 2.1 The Owner covenants not to permit the Occupation of more than 3000 Residential Units unless it has offered to transfer the Household Waste and Recycling Centre Land to the County Council (“the Offer”) pursuant to this Schedule 9, on a price to be agreed between the Owner and the County Council based on market rates associated with land for Employment Uses and in the event that the County Council accepts the Offer the Owner shall complete the transfer of the Household Waste and Recycling Centre Land within 12 (twelve) months of the date of the Offer and further if the Owner and the County Council are unable to agree the price within 6 (six) months from the date of the Offer then the provisions of clause 23 shall apply.

- 2.2 The Owner covenants that it shall safeguard the Household Waste and Recycling Centre Land and shall not use the Household Waste and Recycling Centre Land for any other purpose until such time as it is either transferred to the County Council or until the provisions of this Schedule cease to have effect pursuant to paragraph 2.4 below.
- 2.3 The Owner covenants with the County Council that in respect of the transfer required pursuant to paragraph 2.1 of this Schedule it shall agree a form of transfer to include appropriate Access and Services as reasonably required by the County Council.
- 2.4 In the event that the County Council rejects the offer of the transfer of the Household Waste and Recycling Centre Land made pursuant to paragraph 2.1 above, or the County Council fails to respond to such an offer within 12 months of that offer being received then the Owner's obligations pursuant to paragraph 2 this Schedule shall cease to have effect.

3 HOUSEHOLD WASTE AND RECYCLING CENTRE CONTRIBUTION

- 3.1 The Owner covenants with the County Council that it shall pay the Household Waste and Recycling Centre Contribution to the County Council on the Occupation of 3000 Residential Units and covenants not to Occupy more than 3000 Units unless it has paid the Household Waste and Recycling Centre Contribution to the County Council
- 3.2 In the event the Household Waste and Recycling Centre Land is transferred to the County Council pursuant to paragraphs 2.1 and 2.2 above the Owner covenants with the County Council that it shall pay on the Transfer Date fifteen percent of the total reasonably and properly incurred acquisition costs which for the avoidance of doubt shall include the proportionate cost of the purchase price of the Household Waste and Recycling Centre Land at market rates associated with land for Employment Uses and the proportionate costs of any associated legal and surveyors fees.
- 3.3 In the event the County Council rejects the offer of the Household Waste and Recycling Centre Land made pursuant to paragraph 2.1 above and purchases land Off-Site for use as a Household Waste and Recycling Centre the Owner covenants with the County Council that it shall pay within 20 (twenty) days of receiving a written demand the lesser sum of:
- 3.3.1 fifteen percent of the total reasonably and properly incurred acquisition costs of the Off-Site land which for the avoidance of doubt shall include the proportionate cost of the purchase price of the Off-Site land and the proportionate costs of any associated legal and surveyors' fees; or
 - 3.3.2 the equivalent of fifteen percent of the total reasonable acquisition costs of the Household Waste and Recycling Centre Land offered to the County Council which for the avoidance of doubt shall include the proportionate cost of the purchase price of the Household Waste and Recycling Centre Land at market rates associated with land for Employment Uses and the proportionate costs of any associated legal and surveyors fees.

4 COUNTY COUNCIL COVENANTS

- 4.1 The County Council covenants with the Owner that where any details are submitted to it pursuant to this Schedule for its approval it shall act reasonably in the consideration of those details and that it shall not unreasonably withhold approval of those details in any event.
- 4.2 In the event the Household Waste and Recycling Centre Land is transferred to the County Council and the County Council does not use the Household Waste and Recycling Centre Land as a Household Waste and Recycling Centre within 10 years from the date of transfer the

County Council shall offer to transfer the Household Waste and Recycling Centre Land to the party which was the transferor of the Household Waste and Recycling Centre Land on the date it was transferred to the County Council for the same price as the County Council paid for the transfer as agreed in paragraph 2.1 (minus the fifteen percent paid by the Owner pursuant to clause 3.2).

- 4.3 In the event the County Council shall use and/or redevelop the Household Waste and Recycling Centre Land for any other purpose than the Household Waste and Recycling Centre the County Council shall pay as soon as reasonably practicable to the party which was the transferor of the Household Waste and Recycling Centre Land on the date it was transferred to the County Council, fifteen percent of the land value of the Household Waste and Recycling Centre Land based on market rates associated with land for Employment Uses which exist on the date of the change of use/ completion of the redevelopment.
- 4.4 In the event the County Council shall sell the Household Waste and Recycling Centre Land the County Council shall pay as soon as reasonably practicable to the party which was the transferor of the Household Waste and Recycling Centre Land on the date it was transferred to the County Council fifteen percent of the land value of the Household Waste and Recycling Centre Land based on market rates associated with land for Employment Uses which exist on the date of sale.
- 4.5 The County Council covenants with the Owner that where any financial contribution is paid to it pursuant to this Schedule it shall use that contribution for the purpose that it was paid as stated in this Deed and for no other purpose.
- 4.6 The County Council covenants with the Owner to use any contribution paid to it pursuant to this Schedule within 10 (ten) years of receipt and that it shall repay that contribution or any part of it that remains unspent at the end of that period to the party which paid the contribution together with any interest accrued.

5 TRANSFER OF SITE

- 5.1 If any transfer takes place pursuant to clause 2.1 above then the Owner covenants that the Household Waste and Recycling Centre Land shall be transferred as:
- 5.1.1 a site in Clean Condition suitable for its intended purpose as Household Waste and Recycling Centre;
 - 5.1.2 a site on which the Household Waste and Recycling Centre can be built or laid out without any adverse effect from any listed building ecological feature or other material planning consideration which would adversely affect the use or construction of buildings on the Household Waste and Recycling Centre Land;
 - 5.1.3 free from any public or third-party rights or other encumbrances which would adversely affect the use or construction of buildings on the Household Waste and Recycling Centre Land; and
 - 5.1.4 free from any pipes wires sewers or cables or protected strip in respect thereof which would prevent inhibit or limit the development of the Household Waste and Recycling Centre Land and/or its suitability and fitness for purpose or materially increase the cost of the development of the Household Waste and Recycling Centre Land by the transferee.

SCHEDULE 10

Affordable Housing, Viability Review, Lifetime Homes, Passivhaus, Self-build Housing, Extra Care and M27 Junction 10 Cost Over-runs

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“Additional Affordable Housing Unit”	an Affordable Housing Unit to be delivered in accordance with the provisions of Part B of this Schedule 10;
“Affordable Home Ownership Unit”	an Affordable Housing Unit identified in an approved Housing Statement and which meets the description of paragraph (d) in the definition of 'Affordable housing' contained in Annex 2 of the NPPF but for the avoidance of doubt shall not include Help-to-Buy;
“Affordable Housing Contribution”	a sum which may be agreed or determined in accordance with paragraph 5.3 or 5.4 and/or 6.3 or 6.4 of Part B of this Schedule 10 which shall be payable by the Owner to the Borough Council as a contribution towards the provision or regeneration of Affordable Housing in the Borough Council's administrative area;
“Affordable Housing Land”	those parts of the Land upon which the Owner is to construct or procure the construction of the Affordable Housing Units and including all curtilage thereto;
“Affordable Housing Steering Group”	a group to include representatives from the Borough Council, the Owner and, in the event that it accepts an invitation by the Borough Council to join the group, Homes England to consider matters relating to the provision of Affordable Housing Units including (i) the programming and monitoring of the delivery of Affordable Housing Units, (ii) the use of any Profit Share evidenced in Viability Reviews, and (iii) the provision of Affordable Housing Units from a Registered Provider, and (iv) the bidding for, accepting or refusing funding from any government source in connection with the delivery of Affordable Housing Units;
“Affordable Rent”	a rent (including any Service Charge and / or the Estate Management Charge) (if payable by the Occupier of the Affordable Rent Unit) in respect of the relevant Affordable Rent Unit which shall not exceed the lower of 80% of the Market Rent or the Local Housing Allowance in respect of the relevant Affordable Rent Unit;

“Affordable Rent Unit”	an Affordable Housing Unit identified in an approved Housing Statement and let or to be let to Eligible Persons at an Affordable Rent;
“Allocations Policy”	the housing allocations policy prepared by the Borough Council as may be subsequently varied or replaced by the Borough Council under the Housing Act 1996 (as amended);
“Annual Statement”	a statement of income and expenditure in connection with the Development from the previous financial year such figures to be used in the Viability Appraisal where applicable;
“Anticipated Period”	the period from and including the relevant Valuation Date to and including the date when it is anticipated as at the relevant Valuation Date that all the Developer’s Infrastructure will have been provided and all of the Serviced Plots will have been disposed of or let and all Receipts from the Developer’s Project will have been received;
“Baseline Requirement”	the requirements in paragraphs 2.1 and 4 of Part A of this Schedule 10;
“Chargee”	any mortgagee or chargee of the Registered Provider or other party who has provided loan facilities to the Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (however appointed) including any housing administrator;
“Connected Person”	as defined in Section 1122 of the Corporation Tax Act 2010
“Cost of Capital”	the cost of capital agreed or determined in accordance with paragraph 1.6 of Part B of this Schedule 10;
“Cost Over-Run Affordable Housing Calculation”	<p>$X \text{ divided by } 62,500 = Y$</p> <p>where:</p> <p>X = the amount of the Cost Over-Run Contribution the Owner is required to pay to the County Council,</p> <p>and</p> <p>Y = the number of the Affordable Housing Units to be reduced across the Development as a result of the payment by the Owner towards Cost Over-Run Contribution following a Cost Over-Run Contribution Request;</p>

“Cost Over-Run Notice”

the notice served by the Owner on the Borough Council pursuant to paragraph 1.1 of Part G of this Schedule 10;

“Cost Over-Run Unit Number”

Y in the Cost Over Run Affordable Housing Calculation;

“Costs”

the costs in relation to the Developer’s Project as specifically identified in the Schedule of Costs and Receipts which shall include but not be limited to:

- (a) infrastructure and development costs which shall include all actual costs and the Owner’s projected costs, both of which will be benchmarked against industry data to determine their reasonableness if delivered by related parties, and having regard to the requirements of any Design Codes approved by the Borough Council or any specific design requirements of the Permission or this Deed;
- (b) all reasonable and proper costs incurred by the Owner and/or its agents in acquisition of the Application Site and/or obtaining the Permission and/or a Reserved Matter Approval and/or fees payable to the County Council or the Borough Council under the terms of this Deed;
- (c) Cost of Capital;
- (d) cost of repayment of Public Loans and any Grant Funding;
- (e) the payment of an Affordable Housing Contribution in accordance with this Schedule 10,

PROVIDED THAT:

- (f) where the Owner is unable to prove that any costs have been incurred and they are not agreed by the Borough Council (or determined by the expert as deemed costs) they will be removed from the Viability Appraisal and disregarded for the purposes of the Viability Review;
- (g) unreasonably high actual costs (in the absence of a reasoned justification accepted by the Borough Council or the expert) shall not be accepted and will be replaced with reasonable costs to be agreed between the parties or determined by the expert as reasonable costs for the purposes of the Viability Review;

- (h) the only cost in relation to the M27 Junction 10 Improvement Works to be included in a Viability Appraisal shall be the M27 Junction 10 Improvement Works Contribution and any sums paid to the County Council following receipt of a Cost Over-Run Contribution Request;
- (i) where the Owner is seeking to recoup the Owner's Internal Costs it must be demonstrated that these are fair, reasonable and in line with market practice; and
- (j) the cost of delivering such Infrastructure or other building for which there is Grant Funding (or any cost associated therewith) shall, to the extent covered by the Grant Funding which is not to be repaid, be excluded;

“Developer's Infrastructure”

that part of the Development including but not limited to all infrastructure to be delivered to accord with this Deed and the Permission, the provision of all services, telecommunications and utilities across the Development and to the Serviced Plots, the delivery of all roads and public rights of way connected with the Development, the delivery of the employment and commercial areas, and such other infrastructure as notified to the Borough Council is required to enable the sale of Serviced Plots;

“Developer's Project”

the acquisition of the Application Site and the provision of Developer's Infrastructure and the disposal/let of Serviced Plots to housebuilders and/or developers or occupiers of Commercial Units (as applicable) SAVE THAT where there appears to the Borough Council to be no such disposal of a Serviced Plot by the Owner, the Viability Appraisal Model shall be revised to include and the relevant Viability Appraisal shall include a notional disposal value and the provisions of Part B of this Schedule 10 shall apply mutatis mutandis;

“Eligibility Agent”

Help to Buy agent for the South of England appointed by Homes England from time to time (or such successor body) or such other body as agreed by the Borough Council;

“Eligible Person”

such person who are unable to afford Private Residential Units (either by rental or purchase) to meet their housing needs due to the relationship between their incomes and local housing prices within the administrative boundaries of the Borough Council and who are

- (a) (in respect of Social Rent Units and Affordable Rent Units) eligible under the Allocations Policy and on the Register; or
- (b) (in respect of Social Rent Units and Affordable Rent Units which are Extra Care Units) certified by the County Council acting reasonably in the discharge of their housing function as being eligible to reside in the Extra Care Units in view of their housing and care needs or the Affordable Housing Units in view of their housing needs; or
- (c) ((in respect of Affordable Home Ownership Units) eligible for Affordable Home Ownership Units and registered with the Eligibility Agent;

“EIRs”	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
“Equivalent Percentage”	the equivalent percentage of Affordable Housing Units that would have been delivered as Additional Affordable Housing Units in the next Residential Unit Period (having regard to points (i) and (ii) in the definition of HIG Recycling Housing Proposal) had the Affordable Housing Contribution not been requested;
“Extra Care Delivery Strategy”	<p>a strategy to deliver Extra Care Units as part of the Development, such strategy to include:</p> <ul style="list-style-type: none"> • roles and responsibilities of the Owner, County Council and Borough Council; • a draft marketing strategy; • details of the Extra Care Operator to which the Extra Care Units would be marketed; • draft heads of terms for disposal of the Extra Care Units to an Extra Care Operator; • a draft programme for the delivery of the Extra Care Units; • the proposed site on which the Extra Care Units would be provided, to include indicative means of access and servicing; and • proposed design standards for the Extra Care Units;
“Extra Care Operator”	a Registered Provider with experience delivering and operating Extra Care Units;
“Extra Care Unit”	an Affordable Housing Unit with the provision of extra care;

“FOIA”	the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“Group”	in relation to the Owner, any Subsidiary or Subsidiary Undertaking or any Holding Company or Parent Undertaking from time to time of the Owner, and any Subsidiary or Subsidiary Undertaking from time to time of a Holding Company or Parent Undertaking of that company. Each company in a Group is a member of the Group;
“Grant Funding”	public grant/subsidy specified to be utilised for the Developer’s Project, (including any additional funding in excess of the HIG Funding) excluding any receipts or any other funding recycled by a Registered Provider, as applicable;
“HIG Recycling Housing Proposal”	<p>a proposal by the Borough Council in relation to paragraph 5 Part B to this Schedule 10 having regard to</p> <ul style="list-style-type: none"> (i) the requirement to provide a tenure split of 50% Affordable Rent Units and Social Rent Units and 50% Affordable Home Ownership Units in respect of the Additional Affordable Housing Units in the next Residential Unit Period; (ii) the unit types in paragraph 4.2 and 4.3 of Part A of this Schedule 10; and (iii) the need and appropriateness for Affordable Housing in the next Residential Unit Period and across the Borough Council’s administrative area; <p>and setting out:</p> <ul style="list-style-type: none"> (a) the percentage of Residential Units to be delivered as Additional Affordable Housing Units in the next Residential Unit Period SUBJECT ALWAYS to a maximum of 40% of Residential Units required to be provided as Affordable Housing Units in the next Residential Unit Period; (b) a breakdown of the tenure split and unit types of (a) above; (c) any Affordable Housing Contribution; (d) the Equivalent Percentage;
“Holding Company”	has the meaning given in Section 1159 of the Companies Act 2006
“Homes England”	Homes England or any successor government agency or body responsible for the delivery of new Affordable Housing;

“Housing Statement”	a housing statement submitted to and approved in writing by the Borough Council pursuant to condition 39 of the Planning Permission;
“IDP Schedule”	the IDP Project Schedule set out in the appendix to the Welborne Infrastructure Delivery Plan 2019 Update and submitted with the Application;
“Internal Costs”	the internal costs of the Owner in connection with the Development including but not limited to the costs of employment, the running costs of the office accommodation;
“Lifetime Homes”	a Residential Unit that meets the Lifetime Homes Allowance;
“Lifetime Homes Allowance”	Lifetime Homes Standard published July 2010 (as may be varied or replaced from time to time);
“Local Housing Allowance”	the rental allowance rate for a property of the size and in the location of the relevant Affordable Rent Unit calculated by reference to the tables maintained by the Valuation Office Agency (or such equivalent means of calculation that may vary or replace it) as updated from time to time;
“Market Rent”	<p>an assessment of the best rent reasonably obtainable for a letting of an interest in property on the date of valuation assuming:</p> <ul style="list-style-type: none"> (a) a willing landlord and a willing tenant; (b) an arm’s length transaction; (c) that, prior to the date of valuation, there had been a reasonable period for the proper marketing of the interest, for the agreement of the rent and other letting terms, and for the completion of the letting; (d) that the lease terms are appropriate for a letting of the type and class of the subject property; (e) that both parties to the transaction had acted knowledgeably prudently and without compulsion; and (f) that the terms of this Deed are disregarded;
“National Rent Regime”	the system for setting target rents for Social Rent Units administered by Homes England or any replacement regime administered by the Ministry of Housing Communities and Local Government or any successor body or government department;
“Nominations Agreement”	<p>an agreement or agreements made between the Borough Council and a Registered Provider under which the Borough Council exercise a power to nominate Eligible Persons for the Affordable Rent Units and Social Rent Units in accordance with:</p> <ul style="list-style-type: none"> (a) Part VI of the Housing Act 1996 Section 159; and (b) the Allocations Policy; and

(c) the requirements of Homes England;

“NPPF” the National Planning Policy Framework dated 20 July 2021 and any subsequent revision or replacement;

“Older Person Unit” an Affordable Housing Unit that is designed to be suitable for the present and changing needs of those aged 55 years and over which may be sheltered housing, Extra Care Units or other affordable older persons housing;

“Parent Undertaking” has the meaning given in Section 1162 of the Companies Act 2006

“Passivhaus” Residential Units certified by or on behalf of the Passivhaus Trust as meeting the 'Passivhaus Standard' as may be defined by the Passivhaus Trust from time to time or certified by such other body as the Owner and the Borough Council agree in writing and meeting an equivalent standard to the 'Passivhaus Standard';

“Percentage Reduction” the Cost Over-Run Unit Number / 6,000, expressed as a percentage;

“Policy Housing Proposal ” a proposal by the Borough Council in accordance with Part B paragraph 6 having regard to:

- (i) the requirement to provide a tenure split of 70% Affordable Rent Units and Social Rent Units and 30% Affordable Home Ownership Units in respect of the Additional Affordable Housing Units in the next Residential Unit Period;
- (ii) the unit types in paragraph 4 of Part A of this Schedule 10;
- (iii) the need and appropriateness for Affordable Housing in the next Residential Unit Period and across the Borough Council's administrative area;
- (iv) the need for Lifetime Homes having regard to the building regulations at the time; and
- (v) the need for Passivhaus having regard to the building regulations at the time and the cost for certification;

and setting out:

- (a) the percentage of Residential Units to be delivered as Additional Affordable Housing Units in the next Residential Unit Period SUBJECT ALWAYS to a maximum of 40% of Residential Units required to be provided as Affordable Housing Units in the next Residential Unit Period;
- (b) a breakdown of the tenure split and unit types of (a) above;
- (c) any Affordable Housing Contribution;
- (d) the Equivalent Percentage;

	(e) the percentage of Residential Units to be delivered as Lifetime Homes in the next Residential Unit Period; and
	(f) the percentage of Residential Units to be delivered as Passivhaus in the next Residential Unit Period;
“Policy Target”	the delivery of 30% of the Residential Units as Affordable Housing Units across the Development;
“Profit on Cost”	the profit from the Developer’s Project expressed as a percentage of the Developer’s Costs;
“Profit on GDV”	the profit from the Developer’s Project expressed as a percentage of the gross development value of the Developer’s Project;
“Profit Share”	(a) in relation to paragraph 5 of Part B of this Schedule 10, the monetised amount of 80% of the Profit on Cost in excess of the Target Profit; and (b) in relation to paragraph 6 of Part B of this Schedule 10, the monetised amount of 50% of the Profit on GDV in excess of the Target Profit;
“Protected Tenant”	any tenant who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or (b) has exercised any statutory right to buy (or equivalent contractual right) in respect of a particular Affordable Housing Unit; or (c) has Staircased in respect of their Affordable Home Ownership Unit so that the tenant owns the entire Affordable Housing Unit;
“Public Loan”	any loan or other form of loan funding from a government department;
“Receipts”	the receipts in relation to the Developer’s Project as specifically identified in the Schedule of Costs and Receipts including but not limited to land and property receipts, deferred receipts, option payments, site deposits from commercial tenants, capitalised rental revenue, meanwhile income PROVIDED THAT: (i) receipts arising from any Letting of the Land prior to Development on such part of the Land shall be included; (ii) unreasonably low receipts shall not be accepted and shall be replaced with reasonable receipts;

(iii) Grant Funding or Public Loans shall not be treated as a receipt;

“Register”	the Borough Council’s LetSelect Register or such other register of applicants as the Borough Council shall from time to time reasonably adopt and keep up to date;
“Registered Provider”	a provider of Affordable Housing which is a social landlord or other body registered as a provider of social housing with the Homes and Community Agency as defined by section 80 of the Housing and Regeneration Act 2008 and which meets the requirements of the Homes England for the receipt of grant monies and the provision of Affordable Housing or such other body as approved by the Borough Council;
“Residential Unit Period 1 -3,000”	the development of Residential Units 1 – 3,000;
“Residential Unit Period 1 – 4,500”	the development of Residential Units 1 – 4,500;
“Residential Unit Periods”	the development of Residential Units in the following groups: Residential Units 1 – 1,000 Residential Units 1,001 – 2,000 Residential Units 2,001 – 3,000 Residential Units 3,001 – 4,000 Residential Units 4,001 – 5,000 Residential Units 5,001 – 5,800 Residential Units 5,801 – 6,000, and Residential Unit Period shall be construed accordingly;
“RICS Guidance Note”	the RICS Guidance Note “Assessing viability in planning under the National Planning Policy Framework 2019 for England” dated March 2021, and any subsequent revision or replacement;
“Schedule of Costs and Receipts”	a schedule of Costs and Receipts in connection with the Developer’s Project as agreed with the Borough Council or determined in accordance with this Schedule 10;
“Self- Build Housing”	a dwelling constructed by or following a commission by a person and occupied by that person as their sole or main residence and shall include Custom Build Housing;
“Self-Build Plot”	an area of land within the Application Site which benefits from the provision of such elements of the Developer’s Infrastructure as are reasonably necessary to enable the construction of Self-Build Housing;

“Self-Build Plot Marketing Strategy”	the self-build marketing strategy to be supplied to the Borough Council in accordance with the requirements of this Schedule 10;
“Self-Build Plot Plan”	a plan showing the number, location and size of the Self-Build Plots to be provided within each Neighbourhood on the Application Site or any amendment or variation to such a plan as may be agreed with the Borough Council;
“Service Charge”	the amount payable by the occupant of an Affordable Housing Unit for all communal services repairs maintenance improvements insurance of the building and curtilage plus estate management costs (not included in the Estate Management Charge) and ground rent;
“Serviced Plots”	an area of land within the Application Site which benefits from the provision of such elements of the Developer’s Infrastructure as are reasonably necessary to enable the construction of Residential Units, Commercial Units or other buildings (as applicable) in accordance with the Permission and which is capable of attracting a Receipt;
“Social Rent”	a rent exclusive of any Service Charge and/or Estate Management Charge (if payable by the occupier of the Social Rent Unit) set according to the National Rent Regime by such body as may be from time to time appointed or recognised by the Borough Council for such purpose;
“Social Rent Unit”	an Affordable Housing Unit identified in an approved Housing Statement and let to Eligible Persons at a Social Rent;
“Staircasing”	in connection with the Affordable Home Ownership Units the acquisition after the date of the initial purchase by the occupier of additional tranches of equity within the said unit and “Staircased” shall be construed as meaning the acquisition of all equity within the said unit;
“Subsidiary”	has the meaning given in section 1159 of the Companies Act 2006 and in interpreting that provision for the purposes of this Deed, a company is to be treated as a member of a subsidiary if it would have been a subsidiary of that company but for any registration of its shares in the name of (i) a nominee or (ii) any party holding security over those shares, or that secured party’s nominee where such registration is necessary or desirable for the purpose of perfecting any such security
“Subsidiary Undertaking”	has the meaning given in Section 1162 of the Companies Act 2006;

“Target Profit”	20%;
“Valuation Date”	the date of the submission by the Owner to the Borough Council of the relevant Viability Appraisal pursuant of this Schedule 10;
“Viability Appraisal”	<p>a financial appraisal on an open book basis for the purposes of establishing the level of Profit on Cost and the Profit on GDV of the Developer’s Project in respect of the Development as a whole and based on the Viability Appraisal Model and for the avoidance of doubt shall include:</p> <ul style="list-style-type: none"> (i) the Site Value and that land drawn down and the corresponding land payment profile must be reflective of the land take necessary to deliver the Development in accordance with the programmes for delivery; (ii) the Costs and Receipts of the Developer’s Project (and (i) any Costs incurred on or before the relevant Valuation Date shall be deemed to have been incurred for the purposes of assessing the Profit on Cost when they were actually incurred and (ii) any Costs or Receipts that have not been incurred or received as at the relevant Valuation Date shall be calculated according to the best estimate of the amounts and when they will be incurred or received (as the case may be) then reasonably available) including any Grant Funding and cost of Public Loans; (iii) the relevant Anticipated Period for the Developer’s Project; and (iv) the Owner’s opinion (acting reasonably) as to when it anticipates the Costs for the Developer’s Project will be incurred and the Receipts for the Developer’s Project will be received throughout the relevant Anticipated Period (and for this purpose it will be assumed that all Costs will be incurred no later than the expiry of the relevant Anticipated Period); (v) Cost of Capital ; (vi) cost of repayment of Public Loans (vii) any Affordable Housing Units provided or Affordable Housing Contribution paid (or to be paid) at the date of submission of the Viability Appraisal;
“Viability Appraisal Model”	an MS Excel-based or Argus-based (or similar) bespoke agreed development appraisal model prepared in accordance with the PPG and RICS Guidance Note, which for the avoidance of doubt, shall assess the Profit on Cost and the Profit on GDV in respect of the Developer’s Project of the Development as a whole using present day values for the remaining part of the Development, and such model shall be produced on a transparent spreadsheet basis accompanied by a report

justifying the inputs used and supported by appropriate professional reports and evidence where necessary;

“Viability Land Plan” the plan appended to this Deed at Appendix 18 and titled “Section 106 Viability Appraisal Land Plan”;

“Viability Review” the process by which a Viability Appraisal carried out by or on behalf of the Owner and provided to the Borough Council is reviewed on an open book basis and having regard to the PPG and RICS Guidance Note and agreed with the Owner (or is determined) pursuant to the provisions of paragraph 4 of this Schedule 10 in order to establish the Profit on Cost or Profit on GDV (as the case may be) in respect of the Developer’s Project;

“Viability Review Mechanism” the steps that must be taken following a Viability Review pursuant to paragraphs 5 and/or 6 of Part B of this Schedule 10.

PART A – AFFORDABLE HOUSING

2 QUANTUM OF AFFORDABLE HOUSING

- 2.1 Subject to Part G of this Schedule 10 the Owner shall provide or procure the provision of not less than ten percent (10%) of the total number of Residential Units approved as part of the Development as Affordable Housing Units on the Land.
- 2.2 Subject to Part B of this Schedule 10 and the operation of the Viability Review Mechanism, the Owner shall provide or procure the provision of the Policy Target.

3 AFFORDABLE HOUSING STEERING GROUP

- 3.1 The Owner shall not Commence Development of a Residential Unit unless the terms of reference of the Affordable Housing Steering Group have been submitted to and approved by the Borough Council and the Affordable Housing Steering Group has been established by the undertaking of the first meeting of the relevant parties.
- 3.2 The Owner and the Borough Council shall participate in the Affordable Housing Steering Group in accordance with the approved terms of reference.
- 3.3 As soon as reasonably practicable following receipt of the draft terms of reference in accordance with paragraph 3.1 above, the Borough Council shall seek the views of Homes England in respect of the draft terms of reference and at the same time shall invite Homes England to join the Affordable Housing Steering Group.
- 3.4 The Borough Council shall give due consideration to the reasonable and proper views and representations of the Owner and the Affordable Housing Steering Group on all matters where consultation is required under this Schedule 10 but the Borough Council’s decision in complying with its requirements in accordance with this Schedule 10 shall be final (unless, where the matter is not subject to the Borough Council’s sole discretion, the Expert has determined a matter in accordance with the provisions of this agreement).

4 TENURE AND UNIT TYPE

4.1 The Affordable Housing Units provided pursuant to paragraph 2.1 shall be provided in accordance with the following tenure mix requirements:

4.1.1 50% shall be provided as Affordable Rent Units or Social Rent Units (or a combination thereof as the Owner may decide acting in its sole discretion); and

4.1.2 50% shall be provided as Affordable Home Ownership Units.

4.2 The Affordable Rent Units and/or Social Rent Units shall together be provided in accordance with the following unit type requirements unless otherwise agreed with the Borough Council acting in its sole discretion:

(a) 15-25% shall be Older Person Units;

(b) 25-30% shall be 1 bedroom Residential Units;

(c) 18-23% shall be 2 bedroom Residential Units;

(d) 20-25% shall be 3 bedroom Residential Units;

(e) 4-6% shall be 4 bedroom (or larger) Residential Units, which shall comprise a range of bed spaces/persons as set out in the table in paragraph 7 below.

4.3 The Affordable Home Ownership Units shall be provided in accordance with the following unit type requirements unless otherwise agreed with the Borough Council acting in its sole discretion:

(a) 20-25% shall be 1 bedroom Residential units;

(b) 40-50% shall be 2 bedroom Residential Units;

(c) 20-25% shall be 3 bedroom Residential Units;

(d) 5-10% shall be 4 bedroom (or larger) Residential Units, which shall comprise a range of bed spaces/persons as set out in the table in paragraph 7 below.

5 DISTRIBUTION AND DELIVERY OF AFFORDABLE HOUSING

5.1 Not less than ten percent (10%) of the total number of Residential Units in a Neighbourhood shall be provided as Affordable Housing Units unless paragraph 2.1 of Part G of this Schedule 10 applies or unless otherwise agreed with the Borough Council.

5.2 Not more than forty percent (40%) of the total number of Residential Units in a Neighbourhood shall be provided as Affordable Housing Units unless otherwise agreed with the Borough Council acting in its sole discretion.

5.3 Not less than ten percent (10%) of the total number of Residential Units in a Reserved Matter Application Area shall be provided as Affordable Housing Units unless paragraph 2.1 of Part G of this Schedule 10 applies or unless otherwise agreed with the Borough Council.

5.4 In the event a Percentage Reduction results from the application of Part G of this Schedule 10 then not less than 10% minus the Percentage Reduction of the Residential Units in Residential Unit Period 1 – 3,000 shall be provided as Affordable Housing Units and not to Occupy more

than 3,000 Residential Units unless 10% minus the Percentage Reduction has been provided as Affordable Housing Units.

- 5.5 In the event a Percentage Reduction results from the application of Part G of this Schedule 10 then not less than 10% minus the Percentage Reduction of the Residential Units in Residential Unit Period 1 – 4,500 shall be provided as Affordable Housing Units and not to Occupy more than 4,500 Residential Units unless 10% minus the Percentage Reduction has been provided as Affordable Housing Units.
- 5.6 The Owner shall not Occupy (unless otherwise agreed with the Borough Council acting in its sole discretion having regard to the layout of the Residential Units as set out in the relevant Housing Statement and a Reserved Matter Approval):
- 5.6.1 more than fifty percent (50%) of the Private Residential Units within a Reserved Matter Application Area until fifty percent (50%) of the Affordable Housing Units within the same Reserved Matter Application Area have been constructed to Practical Completion;
- 5.6.2 more than ninety percent (90%) of the Private Residential Units within a Reserved Matter Application Area until one hundred percent (100%) of the Affordable Housing Units within the same Reserved Matter Application Area have been constructed to Practical Completion.

6 AFFORDABLE HOUSING FROM GRANT FUNDING

- 6.1 If the Owner receives an offer from a Registered Provider to deliver Affordable Housing Units with the support of any public funding expressed to be solely for the Development, the Owner shall within 28 days of agreeing the offer from the Registered Provider, notify the Borough Council of the quantum, tenure, unit type and size of all the Affordable Housing Units to be delivered and the Neighbourhood and Residential Unit Period in which they are to be delivered.
- 6.2 The Borough Council shall, following consultation with the Affordable Housing Steering Group, within 20 Working Days of receiving any notice in accordance with paragraph 6.1 above notify the Owner whether or not the Affordable Housing Units subject of the offer are (in respect of Affordable Housing Units comprised in the Baseline Requirement) in accordance with paragraphs 4 and 7 of Part A of this Schedule 10 or (in respect of Affordable Housing Units above the Baseline Requirement) in accordance with paragraphs 4.2 and 4.3 of Part A of this Schedule 10 and comprise 70% Affordable Rent Units or Social Rent Units and 30% Affordable Home Ownership Units.
- 6.3 Any Affordable Housing Unit delivered in accordance with this paragraph 6 shall contribute towards the Baseline Requirement PROVIDED ALWAYS that such Affordable Housing Units are in accordance with paragraphs 4 and 7 and shall be subject to paragraphs 5.2, 5.4, and 8 to 15 (inclusive) of Part A of this Schedule 10.
- 6.4 Unless otherwise agreed with the Borough Council acting in its sole discretion, any Affordable Housing Unit above the Baseline Requirement delivered in accordance with this paragraph 6 shall contribute towards the Policy Target PROVIDED ALWAYS that such Affordable Housing Units in any Reserved Matter Application shall:
- 6.4.1 comprise 70% Affordable Rent Units or Social Rent Units and 30% Affordable Home Ownership Units; and

6.4.2 be subject to paragraphs 4.2, 4.3, 5.2, 5.4, and 8 to 15 (inclusive) of Part A of this Schedule 10.

7 SIZE OF AFFORDABLE HOUSING UNITS

7.1 The Affordable Housing Units shall have the following minimum floor sizes (gross internal area square metres):

Number of Bedroom(s)	Number of bed spaces (persons)	1 storey dwelling	2 storey dwelling	3 storey dwelling
1b	1p	39		
	2p	50	58	
2b	3p	61	70	
	4p	70	79	
3b	4p	74	84	90
	5p	86	93	99
	6p	95	102	108
4b	5p	90	97	103
	6p	99	106	112
	7p	108	115	121
	8p	117	124	130

8 SOCIAL RENT UNITS

8.1 The following provisions of this paragraph 8 shall apply to any Affordable Housing Units that are to be provided as Social Rent Units.

8.2 The Owner shall not let or otherwise permit the letting of any Social Rent Unit to any person other than at a Social Rent.

8.3 The Owner shall not Occupy any Social Rent Units otherwise than by an Eligible Person(s) in accordance with a Nominations Agreement unless otherwise agreed in writing by the Borough Council.

9 AFFORDABLE RENT UNITS

9.1 The following provisions of this paragraph 9 shall apply to any Affordable Housing Units that are to be provided as Affordable Rent Units.

9.2 The Owner shall not let or otherwise permit the letting of any Affordable Rent Unit to any person other than in accordance with the following:

9.2.1 at an Affordable Rent; and

9.2.2 that the rent at each re-letting is calculated prior to the grant of any new tenancy to ensure that it is an Affordable Rent.

9.3 Not to Occupy an Affordable Rent Unit otherwise than by an Eligible Person(s) in accordance with a Nominations Agreement unless otherwise agreed in writing by the Borough Council.

10 AFFORDABLE HOME OWNERSHIP UNITS

- 10.1 The following provisions of this paragraph 10 shall apply to any Affordable Housing Units that are to be provided as Affordable Home Ownership Units.
- 10.2 Not to use the Affordable Home Ownership Units for any purpose other than for the provision of Affordable Home Ownership Units.
- 10.3 Not to dispose of an Affordable Home Ownership Unit unless it has been demonstrated (to the written satisfaction of the Borough Council) that it will be affordable as Affordable Housing to occupiers when taking into account all mortgage costs, rent, any Estate Management Charge (if payable by the occupier) and Service Charges.
- 10.4 The rent payable in respect of an Affordable Home Ownership Unit shall not exceed 2.75% of the capital value of its unacquired percentage at the point of initial sale, unless otherwise first agreed in writing with the Borough Council.

11 EXTRA CARE UNITS

- 11.1 The Owner shall not Occupy any Extra Care Units otherwise than by an Eligible Person(s) in accordance with a Nominations Agreement unless otherwise agreed in writing by the County Council.
- 11.2 The Owner shall not use the Extra Care Units for any purpose other than for the provision of Extra Care Units.

12 TRANSFER TO REGISTERED PROVIDER

- 12.1 The Owner shall procure that all Affordable Housing Units in a Reserved Matters Application Area shall as soon as reasonably practical be transferred together with the Affordable Housing Land to a Registered Provider.
- 12.2 The Owner shall not Occupy more than twenty five percent (25%) of the Private Residential Units in each Reserved Matters Application Area to which a Reserved Matter Approval relates until the Owner has entered into a contract with a Registered Provider for the construction and subsequent transfer of the Affordable Housing Units within that Reserved Matters Application Area.
- 12.3 The Owner shall not Occupy an Affordable Housing Unit until the unencumbered freehold or long leasehold of the Affordable Housing Land in respect of the relevant Affordable Housing Unit has been transferred to the Registered Provider with full title guarantee such transfer to include:
 - 12.3.1 a grant of full and free rights of access from the public highway or roads intended to become public highway to the Affordable Housing Units;
 - 12.3.2 a grant of full and free rights to the passage of services through service media on the Development up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains; and
 - 12.3.3 as far as reasonably possible the benefit of the same rights covenants obligations and other provisions as shall apply to the Private Residential Units; and

12.3.4 the Registered Provider has entered into in a Nominations Agreement with the Borough Council in respect of the relevant Affordable Housing Units.

13 ESTATE MANAGEMENT CHARGE

13.1 The Owner shall procure that the Estate Management Charge for the Affordable Housing Units shall be paid by the Registered Provider to the Estate Management Company, with the exception of:

13.1.1 any Affordable Housing Units whose owners have exercised the right to acquire pursuant to the Housing Act 1996 or Staircased in respect of an Affordable Home Ownership Unit (whose Estate Management Charge will thereafter be payable by the owners of such Residential Units in accordance with paragraph 3.1.2 of Schedule 1); and

13.1.2 any Affordable Home Ownership Units where the Registered Provider may require the owner of the Affordable Home Ownership Unit to pay the Estate Management Charge.

13.2 For the avoidance of doubt, any transfer of an Affordable Housing Unit to a person(s) exercising the right to acquire pursuant to the Housing Act 1996 or through Staircasing shall contain a title restriction in accordance with paragraph 3.1.2 of Schedule 1.

14 STAIRCASING

14.1 The Registered Provider shall use reasonable endeavours to apply any net capital receipt received as a result of any Staircasing or other staged purchase by a tenant of an Affordable Housing Unit towards the provision of Affordable Housing in the Borough of Fareham (less the reasonable costs incurred by the Registered Provider as approved by the Borough Council).

15 RELEASE OF AFFORDABLE HOUSING PROVISIONS

15.1 The restrictions set out in this Part A of this Schedule 10 shall not apply to the following:

15.1.1 any individual occupier owner or tenant of an individual Private Residential Unit or their successors in title or their mortgagee or charge and respective successors in title;

15.1.2 any Protected Tenant or any successor in title to a Protected Tenant;

15.1.3 any mortgagee or chargee of a Protected Tenant or other party who has provided loan facilities to the Protected Tenant or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise;

15.1.4 any purchaser from any of the parties named in paragraphs 15.1.1, 15.1.2 and 15.1.3 above of an individual Affordable Housing Unit;

15.1.5 a Chargee of the whole or any part of the Affordable Housing Land or any persons or bodies deriving title through such Chargee PROVIDED THAT:

(a) such Chargee shall first give written notice to the Borough Council of its intention to dispose of the Affordable Housing Units 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 Units to another Registered Provider or to the Borough Council for a consideration not less than

the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- (b) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the provisions in this Agreement which provisions shall determine absolutely in respect of those Affordable Housing Units disposed by the Chargee.

PART B – VIABILITY REVIEW

1 AGREEMENT OF THE VIABILITY APPRAISAL MODEL AND THE COST OF CAPITAL

- 1.1 The Owner shall not Occupy more than 1,500 Residential Units nor submit a Reserved Matter Application in respect of the Residential Unit Period 2,001 – 3,000 until a draft Viability Appraisal Model including a draft Schedule of Costs and Receipts has been submitted to the Borough Council for its approval.
- 1.2 Within 20 Working Days of receiving the draft Viability Appraisal Model the Borough Council shall:
 - 1.2.1 agree the draft Viability Appraisal Model; or
 - 1.2.2 discuss with and provide to the Owner any comments which it has on the draft Viability Appraisal Model.
- 1.3 If the Borough Council fails to:
 - 1.3.1 state whether it agrees with the Owner's Viability Appraisal Model; or
 - 1.3.2 provide comments on the draft Viability Appraisal Model,

within 20 Working Days of receipt thereof then the Borough Council shall be deemed to have not agreed with the Viability Appraisal Model as submitted by the Owner to the Borough Council and the Owner shall be entitled to refer the matter to be determined in accordance with clause 23.

- 1.4 If the Borough Council in accordance with paragraph 1.2 of this Part B provides comments on the Viability Appraisal Model then the Owner and the Borough Council shall each use their reasonable endeavours to agree the Viability Appraisal Model within 20 Working Days of receipt of notice in writing from the Borough Council of such comments and if they do not agree it within the said 20 Working Days (or such longer period as may be agreed between the Borough Council and the Owner) then either the Borough Council or the Owner may refer the matter to be Determined in accordance with clause 23.
- 1.5 The Viability Appraisal Model as agreed or determined shall be the agreed Viability Appraisal Model for the purposes of any Viability Appraisal submitted pursuant to this Schedule 10 PROVIDED THAT variations to the Viability Appraisal Model (and, for the avoidance of doubt, the Schedule of Cost and Receipts) may from time to time be agreed between the Borough Council and the Owner.
- 1.6 At regular intervals of not greater than every three years and in any event prior to the submission of a Viability Appraisal, the Owner and the Borough Council shall meet to agree the cost of capital to use in subsequent Viability Appraisals, subject always to paragraph 1.6.1.

Minutes of the meetings will be produced and agreed between the Owner and the Borough Council. The objective of the meeting will be to ensure the sources of finance, composition and rates are reviewed to optimise the viability of the Development.

1.6.1 The cost of capital shall comprise:

- (a) the actual rates in relation to Government loans and public and private debt;
- (b) the actual rates in relation to any third party equity funding;
- (c) where it is in connection with any funding between the Owner and the Group or a Connected Person a benchmarked rate for equity prevalent in the market at the time of the Viability Appraisal shall be applied.

1.7 If the Owner and the Borough Council do not agree the cost of capital at the meeting or the minutes of the meeting held in accordance with paragraph 1.6 above, then either the Owner or the Borough Council may refer the matter to be determined in accordance with clause 23.

2 ANNUAL STATEMENT OF INCOME AND EXPENDITURE AND MONITORING

2.1 For the period beginning 12 months after the date of the first Reserved Matter Approval until the completion of the final Viability Review, not later than 1 October of each year to submit an Annual Statement to the Borough Council.

2.2 Where there is any significant variance in an item in the Annual Statement and the IDP Schedule, the Annual Statement shall include an explanation for such variation.

2.3 To provide the Borough Council with a copy of its annual audited accounts within 20 Working Days of their production.

2.4 To provide the Borough Council upon reasonable request with any background documents referred to in the Annual Statement to enable the Borough Council to understand the terms of the Annual Statement.

2.5 To notify the Borough Council within the Annual Statement of any Public Loans or Grant Funding achieved in the relevant year.

2.6 To notify the Affordable Housing Steering Group within 10 Working days of

2.6.1 making an application, if it has applied for any Grant Funding; or

2.6.2 notification of the agreement for Public Loan or Grant Funding.

3 VIABILITY APPRAISALS

3.1 Following the Practical Completion of 1,800 Residential Units and prior to the Practical Completion of 1,850 Residential Units, to submit a Viability Appraisal to the Borough Council and not to Occupy more than 2,000 Residential Units unless the Viability Appraisal and the HIG Recycling Housing Proposal and/or the Policy Housing Proposal (as applicable) have been agreed or determined.

3.2 Following the Practical Completion of 2,800 Residential Units and prior to the Practical Completion of 2,850 Residential Units, to submit a Viability Appraisal to the Borough Council and not to Occupy more than 3,000 Residential Units unless the Viability Appraisal and the HIG

Recycling Housing Proposal and/or the Policy Housing Proposal (as applicable) have been agreed or determined.

- 3.3 Following the Practical Completion of 3,800 Residential Units and prior to the Practical Completion of 3,850 Residential Units, to submit a Viability Appraisal to the Borough Council and not to Occupy more than 4,000 Residential Units unless the Viability Appraisal and the HIG Recycling Housing Proposal and/or the Policy Housing Proposal (as applicable) have been agreed or determined.
- 3.4 Following the Practical Completion of 4,800 Residential Units and prior to the Practical Completion of 4,850 Residential Units, to submit a Viability Appraisal to the Borough Council and not to Occupy more than 5,000 Residential Units unless the Viability Appraisal and the HIG Recycling Housing Proposal and/or the Policy Housing Proposal (as applicable) have been agreed or determined.
- 3.5 Following the Practical Completion of 5,600 Residential Units and prior to the Practical Completion of 5,650 Residential Units, to submit a Viability Appraisal to the Borough Council and not to Occupy more than 5,800 Residential Units unless the Viability Appraisal and the HIG Recycling Housing Proposal and/or the Policy Housing Proposal (as applicable) have been agreed or determined.

4 VIABILITY REVIEW

- 4.1 The Borough Council shall within 20 Working Days of receipt of a Viability Appraisal from the Owner give notice in writing stating whether or not it agrees with the Owner's Viability Appraisal and if it does not agree it then it shall state in such notice its reasons.
- 4.2 If the Borough Council fails to state whether it agrees with the Owner's Viability Appraisal within 20 Working Days of receipt thereof or states its reasons for not agreeing then the Borough Council shall be deemed to have not agreed with the Owner's Viability Appraisal as submitted by the Owner to the Borough Council and the Owner shall be entitled to refer the matter to be determined in accordance with clause 23.
- 4.3 If the Borough Council states in accordance with paragraph 4.1 above that it does not agree with the Viability Appraisal then the Owner and the Borough Council shall within 20 Working Days of receipt of notice in writing from the Council of such non acceptance each use their reasonable endeavours to agree the Viability Appraisal and if they do not agree it within the said 20 Working Days then either the Borough Council or the Owner may refer the matter to be determined in accordance with clause 23.

5 VIABILITY REVIEW MECHANISM – HIG Recovery

- 5.1 Where (by reference to the relevant Viability Appraisal) the Viability Review evidences a Profit on Cost in excess of the Target Profit then the following provisions shall apply to the effect that the Profit Share up to the value of the HIG Funding shall be used towards the delivery of Additional Affordable Housing Units (SUBJECT ALWAYS to a maximum of 40% of Residential Units required to be provided as Affordable Housing Units in the next Residential Unit Period) in the next Residential Unit Period and/or paid to the Borough Council by way of an Affordable Housing Contribution, in order to achieve the Policy Target.
- 5.2 The Borough Council shall within 20 Working Days (or such other period as may be agreed between the Borough Council and the Owner) of the date the Viability Appraisal is agreed or

determined (as appropriate) pursuant to the Viability Review, following consultation with the Affordable Housing Steering Group, provide the Owner with its HIG Recycling Housing Proposal.

- 5.3 The Owner and the Borough Council shall each use reasonable endeavours to agree the HIG Recycling Housing Proposal within 20 Working Days (or such other period as may be agreed between the Borough Council and the Owner) of receipt by the Owner in accordance with paragraph 5.2 above.
- 5.4 In the event that the parties cannot reach agreement pursuant to paragraph 5.3 above within the 20 Working Day period specified therein (or such other period as may have been agreed between the Borough Council and the Owner in accordance with that paragraph), then the Owner or the Borough Council may refer the matter to an expert for determination in accordance with clause 23 and such expert shall, for the avoidance of doubt, determine the percentage of the Residential Units to be delivered as Additional Affordable Housing Units (together with a breakdown of the tenure split and unit types) to be delivered in the next Residential Unit Period, any Affordable Housing Contribution and the Equivalent Percentage so that, by re-running the relevant Viability Appraisal, the Profit Share is expended.
- 5.5 For the avoidance of doubt, the agreement or determination of the HIG Recycling Housing Proposal shall be limited to whether the Profit Share has been correctly expended or how it can be correctly expended to be as closely aligned as possible to the HIG Recycling Housing Proposal from the Borough Council and not the merits of the percentage, tenure or unit type of the Additional Affordable Housing Units nor the Affordable Housing Contribution.
- 5.6 For the avoidance of doubt, an Affordable Housing Contribution may not be agreed or determined in accordance with paragraphs 5.3 or 5.4 unless the Borough Council has included an Affordable Housing Contribution in its HIG Recycling Housing Proposal in accordance with paragraph 5.2 above.
- 5.7 The Equivalent Percentage shall only require agreement or determination where an Affordable Housing Contribution has been agreed or determined in accordance with paragraph 5.3 or 5.4 above.
- 5.8 The Owner shall not Occupy (unless otherwise agreed with the Borough Council acting in its sole discretion):
 - 5.8.1 more than fifty percent (50%) of the Private Residential Units within a Residential Unit Period where an Affordable Housing Contribution has been agreed or determined unless fifty percent (50%) of the Affordable Housing Contribution for the relevant Residential Unit Period has been paid to the Borough Council;
 - 5.8.2 more than ninety percent (90%) of the Private Residential Units within a Residential Unit Period where an Affordable Housing Contribution has been agreed or determined unless the total Affordable Housing Contribution for the relevant Residential Unit Period has been paid to the Borough Council.
- 5.9 Where an Equivalent Percentage is agreed or determined in accordance with this paragraph 5, one sixth of the Equivalent Percentage shall count towards the Policy Target (save in respect of Residential Unit Period 5,001 - 5,800 which shall be 2/15 and in respect of Residential Unit Period 5,801 – 6,000 which shall be 1/30). For the avoidance of doubt, a worked example of how one sixth, 2/15 and 1/30 of the Equivalent Percentage shall count towards the Policy Target is appended at Appendix 13.

5.10 The Owner shall deliver Additional Affordable Housing Units in the next Residential Unit Period as agreed or determined in accordance with this paragraph 5 subject to the provisions of Part A of this Schedule 10 SAVE THAT:

5.10.1 Paragraph 4 of Part A shall be subject to that agreed or determined pursuant to this paragraph 5; and

5.10.2 the percentage set out in paragraphs 5.1 and 5.3 of Part A shall be increased by the percentage of Additional Affordable Housing Units agreed or determined pursuant to this paragraph 5.

5.11 The Viability Review Mechanism will only apply to the delivery of Additional Affordable Housing Units and Affordable Housing Contribution in the next Residential Unit Period and will not be applied retrospectively to previous Residential Unit Periods.

5.12 For the avoidance of doubt, notwithstanding Part G and the Percentage Reduction that may be applied to paragraph 2.1 of Part A of this Schedule 10, the Borough Council may require in its HIG Recycling Housing Proposal a percentage of Additional Affordable Housing Units in the next Residential Unit Period so as to achieve the Policy Target.

6 VIABILITY REVIEW MECHANISM –Affordable Housing, Lifetime Homes and Passivhaus

6.1 Following the expenditure of Profit Share to the value of the HIG Funding in accordance with paragraph 5 above, where (by reference to the relevant Viability Appraisal) the Viability Review evidences a Profit on GDV in excess of the Target Profit, then the following provisions shall apply to the effect that the Profit Share shall be used towards all or any combination of the delivery of Additional Affordable Housing Units (SUBJECT ALWAYS to a maximum of 40% of Residential Units required to be provided as Affordable Housing Units in the next Residential Unit Period), Lifetime Homes and/or Passivhaus Homes in the next Residential Unit Period and/or paid to the Borough Council by way of an Affordable Housing Contribution, in order to achieve the Policy Target and the provision of Residential Units that are Passivhaus and Lifetime Homes in accordance with Part C and Part D of this Schedule 10.

6.2 The Borough Council shall within 20 Working Days (or such other period as may be agreed between the Borough Council and the Owner) of the date the Viability Appraisal is agreed or determined (as appropriate) pursuant to the Viability Review, following consultation with the Affordable Housing Steering Group, provide the Owner with its Policy Housing Proposal.

6.3 The Owner and the Borough Council shall each use reasonable endeavours to agree the Policy Housing Proposal within 20 Working Days (or such other period as may be agreed between the Borough Council and the Owner) of receipt by the Owner in accordance with paragraph 6.2 above.

6.4 In the event that the parties cannot reach agreement pursuant to paragraph 6.3 above within the 20 Working Day period specified therein (or such other period as may have been agreed between the Borough Council and the Owner in accordance with that paragraph), then the Owner or the Borough Council may refer the matter to an expert for determination in accordance with clause 23 and such expert shall, for the avoidance of doubt, determine the percentage of the Residential Units to be delivered as Additional Affordable Housing Units (together with a breakdown of the unit types), Lifetime Homes and/or Passivhaus to be delivered in the next Residential Unit Period, any Affordable Housing Contribution and the Equivalent Percentage so that, by re-running the relevant Viability Appraisal, the Profit Share is expended.

- 6.5 For the avoidance of doubt, the agreement or determination of the Policy Housing Proposal shall be limited to whether the Profit Share has been correctly expended or how it can be correctly expended to be as closely aligned as possible to the Policy Housing Proposal from the Borough Council and not the merits of the percentage, tenure or type of the Additional Affordable Housing Units, the Affordable Housing Contribution, nor Residential Units that are Lifetime Homes or Passivhaus.
- 6.6 For the avoidance of doubt, an Affordable Housing Contribution may not be agreed or determined in accordance with paragraph 6.3 or 6.4 unless the Borough Council has included an Affordable Housing Contribution in its Policy Housing Proposal in accordance with paragraph 6.2 above.
- 6.7 The Equivalent Percentage shall only require agreement or determination where an Affordable Housing Contribution has been agreed or determined in accordance with paragraph 6.3 or 6.4 above.
- 6.8 The Owner shall not Occupy (unless otherwise agreed with the Borough Council acting in its sole discretion):
- 6.8.1 more than fifty percent (50%) of the Private Residential Units within a Residential Unit Period where an Affordable Housing Contribution has been agreed or determined unless fifty percent (50%) of the Affordable Housing Contribution for the relevant Residential Unit Period has been paid to the Borough Council;
- 6.8.2 more than ninety percent (90%) of the Private Residential Units within a Residential Unit Period where an Affordable Housing Contribution has been agreed or determined unless the total Affordable Housing Contribution for the relevant Residential Unit Period has been paid to the Borough Council.
- 6.9 Where an Equivalent Percentage is agreed or determined in accordance with this paragraph 6, one sixth of the Equivalent Percentage shall count towards the Policy Target (save in respect of Residential Unit Period 5,001 - 5,800 which shall be 2/15 and in respect of Residential Unit Period 5,801 – 6,000 which shall be 1/30). For the avoidance of doubt, a worked example of how one sixth, 2/15 and 1/30 of the Equivalent Percentage shall count towards the Policy Target is appended at Appendix 13.
- 6.10 The Owner shall deliver Additional Affordable Housing Units in the next Residential Unit Period as agreed or determined in accordance with this paragraph 6 subject to the provisions of Part A of this Schedule 10 SAVE THAT:
- 6.10.1 Paragraph 4 of Part A shall be subject to that agreed or determined pursuant to this paragraph 6;
- 6.10.2 The percentage set out in paragraphs 5.1 and 5.3 of Part A shall be increased by the percentage of Additional Affordable Housing Units agreed or determined pursuant to this paragraph 6.
- 6.11 The Viability Review Mechanism will only apply to the delivery of Additional Affordable Housing Units and Residential Units that are Lifetime Homes or Passivhaus in the next Residential Unit Period and will not be applied retrospectively to previous Residential Unit Periods.
- 6.12 For the avoidance of doubt, notwithstanding Part G and the Percentage Reduction that may be applied to paragraph 2.1 of Part A of this Schedule 10, the Borough Council may require in its Policy Housing Proposal a percentage of Additional Affordable Housing Units in the next Residential Unit Period so as to achieve the Policy Target SUBJECT ALWAYS to a maximum

of 40% of Residential Units required to be provided as Affordable Housing Units in the next Residential Unit Period.

7 SITE VALUE

7.1 The site value of the land within the Application Site in any Viability Appraisal shall be calculated in accordance with the following provisions:

7.1.1 The site value of that part of the Application Site shaded red on the Viability Land Plan shall be calculated at £105,900 (one hundred and five thousand and nine hundred pounds) per gross acre;

7.1.2 The site value of that part of the Application Site edged green on the Viability Land Plan shall be:

- (a) where already acquired by the Owner at the date of this Deed, the actual cost of such land; or
- (b) where yet to be acquired at the date of this Deed, the actual cost of such land on acquisition and evidenced by the Owner PROVIDED THAT such cost shall be reasonable.

8 MISCELLANEOUS

8.1 The Owner and the Borough Council shall act in good faith at all times.

8.2 The Owner and the Borough Council will work on an open and transparent basis sharing all information in relation to the Development that it chooses to rely on in a Viability Appraisal.

8.3 The Owner shall pay the Borough Council its reasonable and proper legal and external consultants costs incurred in relation to this part B within 20 Working Days of written demand.

8.4 All financial information provided by the Owner as part of the Viability Review to the Borough Council will be treated as commercially sensitive and confidential.

8.5 The parties recognise that the Borough Council is subject to the requirements of the FOIA and the EIRs.

8.6 The Owner and the Borough Council (acting in its sole discretion) may agree at any point prior to the submission of a Viability Appraisal that the submission of a Viability Appraisal and the corresponding Viability Review is not required.

PART C – LIFETIME HOMES

1 LIFETIME HOMES

1.1 If as a result of the Viability Review Mechanism it is agreed or determined that a percentage which shall not exceed 15% of Residential Units shall be delivered as Lifetime Homes in the next Residential Unit Period, the Owner shall deliver such percentage with an even distribution across the Residential Unit Period.

PART D - PASSIVHAUS

1 PASSIVHAUS

- 1.1 If as a result of the Viability Review Mechanism it is agreed or determined that a percentage which shall not exceed 10% of Residential Units shall be delivered as Passivhaus in the next Residential Unit Period, the Owner shall deliver such percentage with an even distribution across the Residential Unit Period.

PART E – SELF-BUILD HOUSING

1 SELF-BUILD HOUSING

- 1.1 The Owner shall provide a minimum of 1% of the total number of Residential Units within the Development as Self-Build Housing.
- 1.2 The Owner shall submit with any Reserved Matters Application in which Self-Build Housing is proposed a Self-Build Plot Plan and a Self-Build Marketing Strategy for that Reserved Matter Application Area.
- 1.3 The Self-Build Plot Marketing Strategy shall include but shall not be limited to details of the price for each Self-Build Plot, the proposed method of marketing including the placing of advertisements in relevant journals both locally and nationally and any web-based marketing, the length and timing of the marketing campaign and details of the professional team who will be responsible for undertaking that marketing
- 1.4 The Owner shall market each of the Self-Build Plots for sale in accordance with the approved Self-Build Plot Marketing Strategy for a period of not less than 12 months at a realistic market price for a Self-Build Plot in the administrative Borough of Fareham.
- 1.5 The Owner shall at the end of the 12 month marketing period for each Self-Build Plot provide evidence to the Borough Council of the marketing undertaken for each Self-Build Plot in accordance with the Self-Build Plot Marketing Strategy and the responses and or offers received for each Self-Build Plot and/or evidence of any contract for sale of a Self-Build Plot in order to demonstrate real efforts have been made to secure a purchaser for the Self-Build Plot and in the event no purchaser has been found the Owner shall be released from the obligation to develop the Self-Build Plot and the plot may be returned to a Residential Unit for sale on the open market.

PART F – EXTRA CARE UNITS

1 EXTRA CARE REVIEW MEETINGS

- 1.1 Prior to the Occupation of 2,500 Residential Units (or such earlier date as agreed between the Owner and the Borough Council should the District Centre Scheme be submitted for approval earlier than the trigger for approval in paragraph 3.1 of Schedule 3) the Owner shall offer to meet with the County Council and the Borough Council to discuss the need desirability viability and feasibility of delivering Affordable Housing Units as Extra Care Units in the following Residential Unit Period and shall not Occupy more than 2,500 Residential Units unless such meeting has taken place or the County Council and the Borough Council have jointly confirmed in writing that no such meeting is required.
- 1.2 The Owner shall meet with the County Council and the Borough Council thereafter on an annual basis (on or prior to the anniversary of the first meeting, or the date of the County Council and

the Borough Council's joint notice (as applicable)) to discuss the same until the submission by the Owner of the final Viability Appraisal in accordance with this Schedule 10, unless otherwise agreed in writing with the County Council and Borough Council.

2 EXTRA CARE DELIVERY STRATEGY

- 2.1 In the event that the Owner and the Borough Council (acting in consultation with the County Council) agree at a meeting held in accordance with paragraph 1.1 or 1.2 above that the provision of Extra Care Units in the next Residential Unit Period would be beneficial to the proper planning of the Development and to the Borough Council's administrative area (both in terms of the need for Extra Care Units and in terms of the desirability viability and feasibility of providing Extra Care Units as part of the Development), to submit an Extra Care Delivery Strategy to the Borough Council within three months of the date of the relevant meeting for its approval (not to be unreasonably withheld or delayed) and the Owner shall not Occupy any Residential Units in the following Residential Unit Period unless the Extra Care Delivery Strategy has been submitted to and approved by the Borough Council, acting in consultation with the County Council.
- 2.2 In consultation with the County Council the Borough Council shall approve or provide comments on the Extra Care Delivery Strategy within 3 months of receipt of the Extra Care Delivery Strategy.
- 2.3 Subject to the approval the Extra Care Delivery Strategy by the Borough Council the Owner shall use reasonable endeavours to agree heads of terms with an Extra Care Operator for the disposal of a site for the provision of Extra Care Units in accordance with the approved Extra Care Delivery Strategy and to otherwise implement and comply with the responsibilities on the part of the Owner contained in the Extra Care Delivery Strategy.
- 2.4 Any Extra Care Unit delivered in accordance with this paragraph 2 shall count towards the Policy Target.

PART G – COST OVER RUNS

1 Percentage Reduction

- 1.1 In the event that Owner is required to pay any part of the Cost Over Run Contribution it shall provide the Borough Council with a Cost Over-Run Notice setting out the exact sum it is required by the Delivery Body to pay towards a Cost Over-Run such notice to include the Cost Over-Run Affordable Housing Calculation and the Percentage Reduction.
- 1.2 The Borough Council shall notify the Owner of its approval or otherwise of the Percentage Reduction within 20 Working Days of receipt of such notice from the Owner in accordance with paragraph 1.1 above and if the Owner and the Borough Council fail to agree the Percentage Reduction either party may refer the matter for determination under Clause 23.
- 1.3 Following the approval or determination of the Percentage Reduction the percentage set out in paragraph 2.1 of Part A of this Schedule 10 shall be reduced by the Percentage Reduction.

2 Reserved Matter Applications and Neighbourhoods

- 2.1 Subject always to paragraphs 2.1 (and the operation of paragraph 1.3 of Part G of this Schedule 10), 5.4 and 5.5 of Part A of this Schedule 10, following the approval or determination of the Percentage Reduction, the Owner may at its discretion reduce the number of Affordable

Housing Units in any future Reserved Matter Application and any future Neighbourhood which in total shall not be reduced by more than the Cost Over-Run Unit Number PROVIDED THAT any Reserved Matter Application that includes a reduced number shall be accompanied by a notification to the Borough Council of the reduced number of Affordable Housing Units in accordance with this paragraph 2 and the resulting overall percentage of Affordable Housing Units.

- 2.2 For the avoidance of any doubt, the Owner may only reduce the number of Affordable Housing Units comprised in the Baseline Requirement and not any Additional Affordable Housing Units.

SCHEDULE 11

Employment

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“BIC Delivery Strategy”	a strategy in respect of the funding, delivery, operation and marketing of the Business Incubation Centre to be submitted and approved in accordance with paragraph 3 below;
“BIC Site Value”	the estimated amount for which the approved site 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, assuming that the buyer is granted vacant possession of all parts of the land on which the Business Incubation Centre is to be provided (as agreed pursuant to an approved BIC Delivery Strategy) disregarding the Permission and this Deed but having regard to the allocation of the land for office use (other than financial or professional services), the research and development of products or processes, and/or industrial processes (which can be carried out in a residential area without causing detriment to the amenity of the area) on commercial terms and at a market value;
“Business Incubation Centre”	a business incubation centre to be constructed in accordance with a Reserved Matter Approval located on a site of not less than 1 hectare to provide flexible workspace and services to encourage small and new start businesses to locate on the Land and to be supported as they grow;
“Employment and Training Plan”	a plan setting out how the Owner; and to the extent they are not the same person, any developer and their contractors will work with the local Employment and Training Agencies and use reasonable endeavours to specify the provision for employment and training opportunities and other initiatives in respect of the vocational and employability skills required by the Owner, the developer or their contractors, for any new jobs and business opportunities created by the construction of the Development and which shall include provisions for the review and subsequent approval by the Borough Council;
“Employment and Training Agencies”	Employment and training agencies including the following but not limited to: Jobcentre Plus;

Voluntary and private sector providers;

Schools;

Sixth form colleges;

Colleges of further education; and

Universities;

“Employment Areas” The land identified as Employment Areas and shaded blue on the Land Use Plan;

“Schools” the Northern Primary School, the Western Primary School, the District Centre Primary School and the District Centre Secondary School and “School” is to be constructed accordingly;

2 EMPLOYMENT AND TRAINING PLAN

- 2.1 Within 6 months of the date of this Deed to submit the Employment and Training Plan to the Borough Council for its approval.
- 2.2 Not to Commence the Development (other than the M27 Junction 10 Improvement Works) until the Employment and Training Plan has been approved by the Borough Council.
- 2.3 To pay the Borough Council its reasonable expenses incurred in the consideration of the Employment and Training Plan and any subsequent review thereof.
- 2.4 Following approval of the Employment and Training Plan by the Borough Council to implement and where necessary procure the implementation and promote the objectives of the approved Employment and Training Plan.
- 2.5 Following approval of the Employment and Training Plan and Commencement of the Development, to provide annual reports to the Borough Council detailing how the objectives of the Employment and Training Plan are being met.

3 BUSINESS INCUBATION CENTRE

- 3.1 Not to Commence the Development in the District Centre or the Employment Area unless the proposed location of the Business Incubation Centre (which for the avoidance of doubt shall be located within either the District Centre or an Employment Area) has been approved by the Borough Council.
- 3.2 Following the approval of the location of the Business Incubation Centre under paragraph 3.1 unless otherwise agreed with the Borough Council (acting in its absolute discretion) not to Commence the Development in either the District Centre or the relevant Employment Area (whichever is the approved location) unless the BIC Delivery Strategy has been submitted to and approved by the Borough Council, such strategy to include:
 - 3.2.1 a plan showing the exact location of the site for the Business Incubation Centre;
 - 3.2.2 draft heads of terms for the proposed occupation and operation of the Business Incubation Centre;

- 3.2.3 a marketing strategy for attracting and securing operators of the Business Incubation Centre; and
 - 3.2.4 a timetable and programme for the marketing, construction and occupation of the Business Incubation Centre (including reasonable reporting to the Borough Council on progress) such timetable and programme to include (as a minimum) a 12 month marketing period of the Business Incubation Centre in its approved location.
- 3.3 Upon the approval of the BIC Delivery Strategy to thereafter undertake marketing in accordance with the BIC Delivery Strategy.
- 3.4 Subject to paragraph 3.7 below, not to carry out any part of the Development on that part of the Land approved as the site for the Business Incubation Centre in accordance with paragraphs 3.1 to 3.2 above other than the construction of the Business Incubation Centre, unless first approved by the Borough Council.
- 3.5 Where the Owner can demonstrate to the Borough Council's reasonable satisfaction that following the expiry of the initial marketing period approved as part of the BIC Delivery Strategy an operator of the Business Incubation Centre has not been identified or reasonable market terms cannot be agreed the Owner shall either:
 - 3.5.1 market the Business Incubation Centre for a further 12-month period in the approved location in accordance with the BIC Delivery Strategy; or
 - 3.5.2 submit a plan and any other amendments to the BIC Delivery Strategy it considers necessary for approval by the Borough Council identifying an alternative location for the Business Incubation Centre (which shall be in either the District Centre or Employment Areas (whichever was not the approved location pursuant to the BIC Delivery Strategy) and upon the Borough Council approving the alternative location the BIC Delivery Strategy shall be deemed to have been amended to change the location and the Owner shall commence marketing the Business Incubation Centre in the alternative location for a 12 month period in accordance with the BIC Delivery Strategy.
- 3.6 If the Business Incubation Centre has been marketed to operators in accordance with paragraph 3.3 and 3.5 and the Owner has not entered into a legally binding agreement with an operator for the Business Incubation Centre then following the expiry of the second marketing period in paragraph 3.5 it may continue marketing in accordance with the BIC Delivery Strategy or it may offer the Business Incubation Centre to the Borough Council at the BIC Site Value and on the heads of terms set out in the approved BIC Delivery Strategy **PROVIDED ALWAYS** that in the event that the BIC Site Value is not agreed either the Borough Council or the Owner can refer the valuation to an expert in accordance with clause 23 of this Deed.
- 3.7 The Owner shall be released from the restriction in paragraph 3.4 above if it has made an offer to the Borough Council in accordance with paragraph 3.6 and the Borough Council has not signed a legally binding contract to become the operator of the Business Incubation Centre within 6 months of the offer being made **PROVIDED ALWAYS** that in the event the BIC Site Value is referred to an expert in accordance with clause 23 of this agreement the 6 month period shall be suspended from the date of any notice under 23.1.2 until the date of the expert's decision.
- 3.8 If the Owner enters into an agreement with an operator/developer for the Business Incubation Centre it shall:

- 3.8.1 Within 21 days inform the Borough Council of the signing of the agreement and confirm the name of the party to become the operator; and
 - 3.8.2 Update the BIC Delivery Strategy to confirm the programme for delivery of the Business Incubation Centre; and
 - 3.8.3 Use reasonable endeavours to complete the construction of the Business Incubation Centre in accordance with the terms of the agreements with the proposed operator.
- 3.9 Following the completion of construction of the Business Incubation Centre it shall not be Used otherwise than for the provision of flexible workspace and services to encourage and support small and new-start businesses located on the Land unless otherwise agreed with the Borough Council.

SCHEDULE 12

Public Access and Rights of Way

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“A32 Development”	Residential Units on the Land to the east of the A32 shown for indicative purposes as Area A and Area B on the Welborne Highway Plan
“Applicable PROW Maintenance Payment Rate”	means: <ul style="list-style-type: none">- £85 (eighty five pounds) per linear metre for bridleways; and- £65 (sixty five pounds) per linear metre for footpaths- or such other rate as has been adopted by the County Council at the time that the payment is made
“Dashwood Planning Permission”	has the same meaning as in Schedule 5 of this Deed
“District Centre”	the land identified as District Centre and shaded red on the Land Use Plan
“District Centre School Land”	that part of the Land coloured mauve and identified for ‘Primary and Secondary School at District Centre’ on the Land Use Plan
“Eastern Employment Area”	has the meaning at defined in clause 1 in this Deed
“Extension to BW101”	the new bridleway extension from BW100 On Site to link in with FP101 as shown on the PROW Plan
“Fareham Common Bridleway”	the new bridleway to the south of the M27 through Fareham Common from Funtley Hill to Kiln Road coloured green and shown indicatively on the PROW Plan and on the PROW Fareham Common Inset Plan which is to be constructed by the Owner at the Owner’s expense in accordance with the provisions of this Schedule and to connect to the new pedestrian cycle link shown coloured mauve on the PROW Plan and on the PROW Fareham Common Inset Plan
“Hampshire Countryside Design Standards Bridleway Surface”	the ‘Path Surfacing Hampshire Countryside Design Standards’ document as appended to this Deed at Appendix 14 (or any replacement thereof) setting out the requirements and specifications acceptable to HCC Countryside Services in respect of bridleways such detail to be agreed within any Highways Agreement entered into in accordance with the provisions of this Schedule

“FP15”	the footpath numbered Wickham FP15 and shown coloured orange on the PROW Plan
“FP23b North South”	that part of the north south footpath numbered Wickham Footpath 23b shown dashed green on the PROW Plan
“FP23b East West”	that part of the east west footpath numbered Wickham Footpath 23b shown in a solid line coloured green on the PROW Plan
“FP23a”	the extent of the footpath numbered Wickham Footpath 23a shown coloured mint on the PROW Plan delivered through the Dashwood Planning Permission
“FP85”	Fareham Footpath numbered 85 and shown coloured purple on the PROW Plan
“FP86”	the footpath numbered Fareham Footpath 86 and shown dashed green on the PROW Plan
“FP88”	the extent of the footpath numbered Fareham Footpath 88 and shown dashed blue on the PROW Plan
“FP89”	that part of footpath numbered Fareham Footpath 89 and identified by a pink dashed line on the PROW Plan
“FP90”	that part of footpath Fareham Footpath 90 shown coloured dark pink on the PROW Plan
“FP101”	the footpath numbered Fareham Footpath 101 and shown coloured light blue on the PROW Plan
“FP102”	the extent of the footpath numbered Fareham Footpath 102 shown indicatively on the PROW Plan coloured red
“FP103”	that part of footpath numbered Fareham Footpath 103 and shown coloured pink on the PROW Plan
“BW100 Off-Site”	that part of the bridleway numbered Fareham Bridleway 100 on the PROW Plan outside the Land
“BW100 On-Site”	the extent of the bridleway numbered Fareham Bridleway 100 on the PROW Plan within the Land
“HCC Countryside Services”	the division of the County Council with responsibility for the upkeep and recording and maintenance of PROWs
“Highways Agreement”	any agreement or agreements for the dedication and/or construction of the surface of the PROW or any coloured route as identified on the PROW Plan and/or any agreement or agreements for the upgrade of the surface of the PROW or any coloured route as identified on the PROW Plan by way of maintenance works required to the PROW or any coloured route as identified on the PROW Plan (to include the upgrade by way of dedication by the Owner of highway rights where appropriate) pursuant to this Schedule such agreement or agreements to be entered into by the Owner at the Owners expense and the

County Council pursuant to (inter alia) section 278 and/or section 38 and/or section 25 and/or any other provision of the Highways Act 1980 and any other relevant legislation in a form to be agreed by the County Council (acting reasonably) and the expression 'Highway Agreements' and "Highways Agreements" shall be construed accordingly

"Highway Works Completion Certificate"	completion of the works to all PROWs (whether created in accordance with this Schedule or existing PROW or any coloured route as identified on the PROW Plan) to the satisfaction of the County Council as evidenced by the issue of a certificate for the works provided for within a Highways Agreement entered into pursuant to this Schedule
"Index Linked"	has the same meaning as at clause 1
"Lifecycle"	the number of replacements during the 60-year whole life costing;
"Land Use Plan"	Drawing reference PARAMETER PLAN 003 Rev A.4 attached to this Deed at Appendix 19
"M27 Junction 10 Improvement Works"	has the same meaning as in Schedule 13 of this Deed
"New East West Link"	the new bridleway link from the Pegasus Crossing on the A32 to FP86 shown on the PROW Plan coloured turquoise
"New FP86 Link"	the new footpath link from FP86 to the New North South Link shown on the PROW Plan coloured lilac
"Welborne Mile Link"	the extent of the new bridleway linking Funtley Hill to New North South Link as shown indicatively on the PROW Plan coloured blue
"New North South Link"	the new bridleway shown coloured mustard on the PROW Plan
"Off Site PROW Contribution"	the sum of £88,750 (eighty eight thousand seven hundred and fifty pounds) only (Index Linked) to be used by the County Council to design, resurface and maintain BW100
"Order"	any order or orders required by the County Council or Borough Council or other relevant local planning authority (acting reasonably) to divert, create or stop any PROW within the Development pursuant to this Schedule pursuant to any relevant provision within the Highways Act 1980 and/or the Town and Country Planning Act 1990 or any other enabling power or legislation, the appropriate enabling power for such order to be approved and applied for by the Owner to either the Borough Council or County Council or other relevant local planning authority (in accordance with the provisions of this Schedule) at the Owners expense and the expression 'Orders' shall be construed accordingly

“Perpetuity”	has the same meaning as in Clause 1 of this Deed
“PROW”	a public right of way (and for the avoidance of doubt applies to newly created PROWs or any coloured route as identified on the PROW PLAN in accordance with this Schedule or existing PROWs) and ‘PROWs’ shall be construed accordingly
“PROW Commuted Sum”	the commuted sum to be paid by the Owner to the County Council pursuant to the provisions of this Schedule to be used by the County Council for the ongoing maintenance of PROWs within (and outside but providing access to) the Development
“PROW Plan”	drawing number 7328_102C attached to this Deed at Appendix 15 showing the PROWs together with the coloured routes as identified therein
“PROW Fareham Common Inset Plan”	drawing number 7328_103B attached to this Deed at Appendix 16
“Railway Halt Land”	that part of the Land coloured yellow and identified as ‘Potential Railway Halt’ land on the Land Use Plan
“Welborne Highway Plan”	drawing number 7328_104D attached to this Deed at Appendix 22
“Welborne Mile SANG”	the alternative natural greenspace identified coloured blue labelled on the plan WEL-BDL-00XX-DR-K-0004-S2P02 attached to this Deed at Appendix 17
“Welborne Sports Hub Site”	the area identified as the ‘Welborne Sports Hub’ in the PROW Plan

2 DIVERSIONS

2.1 The Owner covenants with the County Council as follows:

- 2.1.1 Prior to Commencement of the Development to apply to Winchester City Council for an Order authorising stopping up and/or diversion of the route of FP23b North South to connect to New North South Link to Funtley Hill as shown on the PROW Plan and not to Commence or permit Commencement of Development unless and until the Owner has applied to Winchester City Council for an Order authorising stopping up and/or diversion of the route of FP23b North South to connect to the New North South Link to Funtley Hill as shown on the PROW Plan; and
- 2.1.2 Prior to Commencement of the Development to apply to the Borough Council (or the Secretary of State as the case may be) for an Order authorising diversion and/or stopping up of the route of FP86 to connect to the New North South Link and not to Commence or permit Commencement of Development unless and until the Owner has applied to the Borough Council (or the Secretary of State as the case may be) for an Order authorising diversion of the route of FP86 to connect to the New North South Link to Funtley Hill as shown on the PROW Plan.

- 2.2 In the event that either one or both of the Orders referred to in paragraph 2.1 above are confirmed, the Owner covenants with the County Council as follows:
- 2.2.1 to enter into a Highways Agreement as soon as reasonably practicable providing for the upgrade of the PROWs as follows:
- (a) for FP23b North South, an upgrade of the diverted footpath surface to a bridleway surface in accordance with Hampshire Countryside Design Standards Bridleway Surface and dedicate the higher rights over the New North South Link required to facilitate its upgrade from footpath to bridleway (together with dedication of any additional Land reasonably required) and for the avoidance of doubt the bridleway shall have a width of 3 metres unless agreed otherwise in writing with the County Council;
 - (b) for the New North South Link an upgrade of the diverted footpath surface to a bridleway surface, in accordance with Hampshire Countryside Design Standards Bridleway Surface and dedicate the higher rights over the New North South Link required to facilitate its upgrade from footpath to bridleway (together with dedication of any additional Land reasonably required) and for the avoidance of doubt the bridleway shall have a width of 3 metres unless agreed otherwise in writing with the County Council; and
- 2.2.2 to complete the works pursuant to paragraphs 2.2.1(a) and 2.2.1(b) in accordance with the Highways Agreement to Highway Works Completion Certificate standard prior to first Occupation of the Development and not to Occupy or permit first Occupation of the Development unless and until the works pursuant to paragraph 2.2.1(a) and 2.2.1(b) are completed to Highway Works Completion Certificate standard.
- 2.3 In the event that either of the applications for an Order referred to in paragraph 2.1 are not confirmed (for whatever reason), the Owner covenants with the County Council as follows:
- 2.3.1 in respect of the application at paragraph 2.1.1, to enter into a Highways Agreement as soon as reasonably practicable providing for the resurfacing of FP23b North South, such resurfacing to be completed to Highway Works Completion Certificate standard prior to first Occupation of the Development and not to Occupy or permit first Occupation of the Development unless and until the resurfacing of FP23b North South has been completed by the Owner in accordance with the Highways Agreement to Highway Works Completion Certificate standard and;
- 2.3.2 in respect of the application at paragraph 2.1.2, to enter into a Highways Agreement as soon as reasonably practicable providing for the resurfacing of FP86, such resurfacing to be completed to Highway Works Completion Certificate standard prior to the earlier of the following occurrences;
- 2.3.2.1 Occupation of 2,700 Residential Units or;
 - 2.3.2.2 The opening to the public of the Welborne Mile SANG (and opening to include opening to the public on a temporary basis); and
- 2.3.3 not to Occupy or permit Occupation of more than 2,700 Residential Units or not to open or permit the opening to the public of the Welborne Mile SANG and opening to include opening to the public on a temporary basis (whichever is the relevant trigger pursuant to paragraph 2.3.2 above) unless and until the Owner has resurfaced FP86 to Highway Works Completion Certificate standard.

2.4 In respect of FP101 and FP102, the Owner covenants with the County Council prior to the earlier of:

2.4.1 Occupation of 3,360 Residential Units;

2.4.2 Commencement of development on the Welborne Sports Hub Site; or

2.4.3 Commencement of the A32 Development,

to apply to the Borough Council (or the Secretary of State as the case may be) for an Order or Orders authorising diversion of;

(a) FP101; and

(b) FP102

as shown on the PROW Plan; and

2.4.4 not to Occupy or permit Occupation of more than 3,360 Residential Units;

2.4.5 Commence or allow Commencement of development on the Welborne Sports Hub Site; or

2.4.6 Commence or allow Commencement of the A32 Development,

(whichever is the relevant trigger pursuant to this paragraph), unless and until the Owner has applied to the Borough Council (or the Secretary of State as the case may be) for an Order or Orders authorising a diversion of FP101 and FP102.

2.5 The Owner further covenants with the County Council as follows:

2.5.1 in the event the Order referred to at paragraph 2.4.3a) is confirmed, the Owner will enter into Highways Agreements as soon as reasonably practicable providing for the works required to the upgrade of the extent of the diverted FP101 as shown on the PROW Plan to a bridleway surface (and dedicate the higher rights required over FP101 to facilitate its upgrade from footpath to bridleway together with dedication of any additional Land reasonably required) in accordance with the Hampshire Countryside Design Standards Bridleway Surface; and for the avoidance doubt the bridleway shall have a width of 3 metres unless agreed otherwise in writing with the County Council;

2.5.2 to complete the works required for the upgrade of the extent of the diversion of FP101 authorised by the confirmed Order or Orders referred to in paragraph 2.4 in accordance with the Highways Agreements to Highway Works Completion Certificate standard prior to

2.5.2.1 first Occupation of the A32 Development

2.5.2.2 and not to Occupy or permit first Occupation of the A32 Development unless and until the works required for the upgrade of the extent of the diversion of FP101 authorised by the confirmed Order are completed in accordance with the Highways Agreement to Highway Works Completion Certificate standard; and

2.5.2.3 in the event the Order referred to at paragraph 2.4.3a) is not confirmed, the Owner will enter into Highways Agreements as soon as reasonably practicable providing for the upgrade of FP101 as shown on the PROW Plan to a bridleway

in accordance with the Hampshire Countryside Design Standards Bridleway Surface and dedicate the higher rights required over FP101 to facilitate its upgrade from footpath to bridleway (together with dedication of any additional Land reasonably required) and for the avoidance of doubt the bridleway shall have a width of 3 metres unless agreed otherwise in writing with the County Council; and

2.5.2.4 in any event to complete the works to FP101 and dedicate the higher rights required over FP101 to facilitate its upgrade from footpath to bridleway (together with dedication of any additional Land reasonably required) pursuant to 2.5.3 above in accordance with the Highways Agreement to Highway Works Completion Certificate standard prior to first Occupation of the A32 Development and not to Occupy or permit first Occupation of the A32 Development unless and until the works to FP101 (together with the dedication of the higher rights from footpath to bridleway) are completed in accordance with the Highways Agreement to Highway Works Completion Certificate standard

2.6 The Owner further covenants with the County Council as follows:

2.6.1 In the event the Order for FP102 referred to at paragraph 2.4.3b) is confirmed, the Owner will enter into a Highways Agreement as soon as reasonably practicable providing for the upgrade of the extent of the diverted FP102 as shown on the PROW Plan to a bridleway in accordance with the Hampshire Countryside Design Standards Bridleway Surface and dedicate the higher rights together with dedication of any additional Land reasonably required over FP102 to facilitate its upgrade from footpath to bridleway which for the avoidance of doubt will be no less than 3 metres in width in a landscaped green corridor

2.6.2 to complete the works required to upgrade of the extent of the diverted FP102 authorised by the confirmed Order pursuant to paragraph 2.6.1 in accordance with the Highways Agreement to Highway Works Completion Certificate standard prior to first Occupation of the A32 Development; and not to Occupy or permit first Occupation of the A32 Development unless and until the works required to upgrade of the extent of the diverted FP102 authorised by the confirmed Order pursuant to paragraph 2.6.1 are completed in accordance with the Highways Agreement to Highway Works Completion Certificate standard; and

2.6.3 in the event the Order referred to at paragraph 2.4.3b) is not confirmed, the Owner will enter into a Highways Agreement as soon as reasonably practicable providing for the works to the upgrade of FP102 as shown on the PROW Plan to a bridleway in accordance with Hampshire Countryside Design Standards Bridleway Surface and dedicate the higher rights required over FP102 to facilitate its upgrade from footpath to bridleway (together with dedication of any additional Land reasonably required) and for the avoidance of doubt the bridleway shall have a minimum width of 3 metres unless agreed otherwise in writing with the County Council; and

2.6.4 in any event to complete the works for the upgrade of FP102 and dedicate the higher rights required over FP102 to facilitate its upgrade from footpath to bridleway (together with dedication of any additional Land reasonably required) pursuant to 2.6.3 above in accordance with the Highways Agreement to Highway Works Completion Certificate standard prior to first Occupation of the A32 Development and not to Occupy or permit first Occupation of the A32 Development unless and until the works required for the upgrade of FP102 (together with the dedication of the higher rights from footpath to

bridleway) are completed in accordance with the Highways Agreement to Highway Works Completion Certificate standard.

- 2.7 The Owner further covenants with the County Council as follows:
- 2.7.1 prior to Commencement of the A32 Development to apply for an Order to the Borough Council (or the Secretary of State as the case may be) authorising diversion of the route of FP103 and not Commence or allow Commencement of the A32 Development unless and until the Owner has applied to the Borough Council (or the Secretary of State as the case may be) for an Order authorising diversion of the route of FP103 as shown on the PROW Plan; and
 - 2.7.2 in the event that the Order referred to in paragraph 2.7.1 above is confirmed, the Owner further covenants with the County Council as follows:
 - 2.7.3 to enter into a Highways Agreement as soon as reasonably practicable after confirmation of the Order providing for the works as required to improve the diverted extent of FP103 as shown on the PROW Plan (together with dedication of any additional Land reasonably required) in accordance with the Hampshire Countryside Design Standards Bridleway Surface; and
 - 2.7.4 to complete the works required to the extent of the diverted FP103 authorised by the confirmed Orders pursuant to paragraph 2.7.1 above in accordance with the Highways Agreement to Highway Works Completion Certificate standard prior to first Occupation of the A32 Development and not to Occupy or permit first Occupation of the A32 Development unless and until the works as required to improve the diverted extent of FP103 authorised by the confirmed Order are completed to Highway Works Completion Certificate standard.

3 NEW PROWS

- 3.1 The Owner covenants with the County Council to enter into such Highways Agreement or Highways Agreements as are necessary following completion of this Deed:
- 3.2 The Owner covenants in respect of the New East West Link as follows;
- 3.2.1 to enter into a Highways Agreement as soon as practicable.
 - 3.2.2 to construct the New East West Link (which for the avoidance of doubt shall have a width of 3 metres unless agreed otherwise in writing with the County Council) in accordance with the Highways Agreement and the Hampshire Countryside Design Standards Bridleway Surface to Highway Works Completion Certificate standard such Highways Agreement to include but not be limited to the dedication of the New East West Link as public highway on or before the earlier of the following occurrences;
 - 3.2.3 the Occupation of 2,000 Residential Units; or
 - 3.2.4 the opening of a school on the District Centre School Land to pupils; and
 - 3.2.5 not to allow Occupation of 2,000 Residential Units; or
 - 3.2.6 the opening of a school on the District Centre School Land to pupils (whichever is the earlier trigger pursuant to paragraphs 3.2.3 and 3.2.4 above);

unless and until the Owner has constructed the New East West Link to Highway Works Completion Certificate standard and such Highways Agreement to include but not be limited to the dedication of the New East West Link as public highway.

- 3.3 The Owner further covenants with the County Council to apply for an Order (or other such Orders that may be appropriate) providing for the stopping up the extent of FP88 as shown on the PROW Plan prior to the earlier of the following occurrences:
- 3.3.1 Commencement of the Development in the District Centre; and
 - 3.3.2 Commencement of the Development in the Eastern Employment Area; and
 - 3.3.3 not to Commence or allow Commencement of Development in the District Centre; and
 - 3.3.4 not to Commence or allow Commencement of the Development in the Eastern Employment Area, (whichever is the relevant trigger pursuant to paragraphs 3.3.1 and 3.3.2 above)
 - 3.3.5 unless and until the Owner has applied to stop up the extent of FP88 pursuant to paragraph 3.3; and
 - 3.3.6 the Owner further covenants not to construct or permit construction on or over FP88 or do anything or permit anything to be done on or over FP88 so as to compromise its use as a PROW unless and until the Order made pursuant to paragraph 3.3 is confirmed by the Borough Council or the County Council (as appropriate) (or the Secretary of State as the case may be).
- 3.4 The Owner covenants in respect of the Fareham Common Bridleway as follows:
- 3.4.1 to enter into a Highways Agreement to dedicate that part of the Land required for the construction of the Fareham Common Bridleway when required by the County Council;
 - 3.4.2 to construct the Fareham Common Bridleway (which for the avoidance of doubt shall have a width of 3 metres unless agreed otherwise in writing with the County Council) to Hampshire Countryside Design Standards Bridleway Surface in accordance with the Highways Agreement to Highway Works Completion Certificate standard prior to the earlier of the following occurrences:
 - 3.4.3 prior to Occupation of 1,160 Residential Units; or
 - 3.4.4 within one calendar month of completion of the M27 Junction 10 Improvement Works; and
 - 3.4.5 not to Occupy or permit Occupation of more than 1,160 Residential Units unless and until the Owner has constructed the Fareham Common Bridleway in accordance with the Highways Agreement and Hampshire Countryside Design Standards Bridleway Surface to Highway Works Completion Certificate standard;
 - 3.4.6 should the M27 Junction 10 Improvement Works adjacent to Fareham Common be open to the public prior to the Occupation of 1,160 Residential Units the Owner covenants not to Occupy or permit Occupation of 10 further Residential Units unless and until the Fareham Common Bridleway is constructed in accordance with the Highways Agreement and Hampshire Countryside Design Standards Bridleway Surface to Highway Works Completion Certificate standard; and

- 3.4.7 that the Fareham Common Bridleway will remain a route for equestrian and/or pedestrian and/or cyclists in Perpetuity and no other user rights exist or will be created in the future.
- 3.5 The Owner covenants in respect of the Extension to BW101 as follows;
- 3.5.1 to construct and dedicate the Extension to BW101 which for the avoidance of doubt shall have a width of 3 metres unless agreed otherwise in writing with the County Council together with the dedication of any additional Land reasonably required) in accordance with the Highways Agreement and the Hampshire Countryside Design Standards Bridleway Surface to Highway Works Completion Certificate standard prior to the earlier of the following occurrences:
- 3.5.2 delivery of the works to FP101 provided for at paragraph 2.5.2 or 2.5.4 above (as appropriate); or
- 3.5.3 prior to first Occupation of the A32 Development; and
- 3.5.4 not to Occupy or permit the Occupation of the A32 Development
- unless and until the Owner has constructed and dedicated the Extension to BW101 to Highway Works Completion Certificate standard as well as dedicated as bridleway any additional Land reasonably required) .
- 3.6 The Owner covenants in respect of the Welborne Mile Link as follows;
- 3.6.1 to construct the Welborne Mile Link (which for the avoidance of doubt shall have a width of 3 metres unless agreed otherwise in writing with the County Council) as well as dedicate any additional Land reasonably required in accordance with the Highways Agreement to Highway Works Completion Certificate standard prior to the Occupation of any Residential Unit within the Development;
- 3.6.2 not to Occupy or permit Occupation of any Residential Unit within the Development unless and until the Owner has constructed the Welborne Mile Link in accordance with the Highways Agreement to Highway Works Completion Certificate standard (and dedicate any additional Land reasonably required);
- 3.6.3 that the Welborne Mile Link will remain a route for equestrian and/or pedestrian and/or cyclists in Perpetuity and no other user rights exist or will be created in the future.
- 3.7 The Owner covenants in respect of the extension to FP15 as follows;
- 3.7.1 to enter into a Highways Agreement as soon as reasonably practicable;
- 3.7.2 to construct an extension to FP15 coloured orange on the PROW Plan to connect into the New North South Link as shown on the PROW Plan, such extension to be completed in accordance with the Highways Agreement (and to dedicate any additional Land reasonably required) to Highway Works Completion Certificate standard prior to first Occupation of any Residential Unit within the Development; and
- 3.7.3 not to Occupy or permit Occupation of any Residential Unit within the Development unless and until the Owner has constructed an extension to FP15 to connect into the diverted route of FP86 as shown on the PROW Plan in accordance with the Highways Agreement to Highway Works Completion Certificate standard (and dedicate any Land reasonably required).

- 3.8 The Owner covenants in respect of the New FP86 Link as follows;
- 3.8.1 to enter into a Highways Agreement as soon as reasonably practicable;
 - 3.8.2 to construct the New FP86 Link to connect into the New North South Link as shown on the PROW Plan, such extension to be completed in accordance with the Highways Agreement to Highway Works Completion Certificate standard prior to first Occupation of any Residential Unit within the Development; and
 - 3.8.3 not to Occupy or permit Occupation of any Residential Unit within the Development unless and until the Owner has constructed an extension to the New FP86 Link to connect into the New North South Link as shown on the PROW Plan to Highway Works Completion Certificate standard
- 3.9 The Owner covenants in respect of the New North South Link as follows:
- 3.9.1 to construct the New North South Link (which for the avoidance of doubt shall have a width of 3 metres unless agreed otherwise with the County Council in writing) as bridleway to an adoptable standard which is to the satisfaction of the County Council prior to first Occupation of any Residential Unit within the Development; and
 - 3.9.2 not to Occupy or permit Occupation of any Residential Unit within the Development unless and until the Owner has constructed the New North South Link as bridleway to an adoptable standard which is to the satisfaction of the County Council; and
 - 3.9.3 in the event that the Order provided for in respect of FP86 at paragraph 2.1.2 above is not confirmed, prior to the Occupation of any Residential Unit within the Development the Owner shall open and make available for uninterrupted use by the public the New North South Link (the maintenance of which shall for the avoidance of doubt remain the responsibility of Welborne Garden Village Trust in accordance with the provisions of Schedule 1 of this Deed SAVE THAT should the Order in respect of FP86 be confirmed in accordance with paragraph 2.2 the maintenance of the New North South Link will be the responsibility of the County Council); and
 - 3.9.4 not to Occupy or permit Occupation of any Residential Unit within the Development unless and until the Owner has opened the New North South Link for uninterrupted use by the public in Perpetuity.

4 EXISTING PROWS

- 4.1 The Owner covenants with the County Council as follows:
- 4.2 in relation to FP23b:
- 4.2.1 to annually monitor the condition of the extent of FP23b East West in collaboration with HCC Countryside Services from Commencement of Development to the Occupation of 3,601 Residential Units;
 - 4.2.2 that in the event the County Council notifies the Owner that the surface (or part of the route) of FP23b East West is unfit for public use the Owner shall enter into a Highways Agreement (on immediate request of the County Council acting reasonably) to provide for the resurfacing of FP23b East West;
 - 4.2.3 to complete the resurfacing of FP23b East West to Highway Works Completion Certificate standard; and

- 4.2.4 not to Occupy or permit Occupation of more than 200 further Residential Units unless and until the Owner has resurfaced FP23b East West to Highway Works Completion Certificate standard
- 4.3 in relation to FP85:
 - 4.3.1 to enter into a Highways Agreement as soon as reasonably practicable;
 - 4.3.2 to resurface FP85 to Highway Works Completion Certificate standard prior to the Occupation of 2,700 Residential Units in the event that the Owner has not received notice from the Borough Council confirming that they require the Railway Halt Land (the "Notice"); and
 - 4.3.3 in circumstances where no Notice has been served, not to permit Occupation of more than 2,701 Residential Units unless and until FP85 has been resurfaced to Highway Works Completion Certificate standard;
 - 4.3.4 in circumstances where a Notice has been served, not to permit Occupation of more than 2,701 Residential Units unless and until such extent of FP85 as is not included within the Railway Halt Land has been resurfaced to Highway Works Completion Certificate standard;
- 4.4 in relation to BW100 On-Site the Owner covenant with the County Council as follows;
 - 4.4.1 to enter into a Highways Agreement as soon as practicable;
 - 4.4.2 to widen to a width of 3 metres (unless agreed otherwise in writing with the County Council) and to resurface the extent of BW100 On-Site as shown on the PROW Plan in accordance with the Highways Agreement to Highway Works Completion Certificate standard, such works to be completed by the earlier of:
 - 4.4.3 the Occupation of 3,360 Residential Units;
 - 4.4.4 the opening of the Welborne Sports Hub Site (or any part thereof) for use by the general public; or
 - 4.4.5 prior to first Occupation of the A32 Development; and
 - 4.4.6 not to allow Occupation of 3,360 Residential Units;
 - 4.4.7 nor to open or allow the opening of the Welborne Sports Hub Site (or any part thereof) for use by the general public;
 - 4.4.8 nor to Occupy or permit the Occupation of the A32 Development
 - 4.4.9 (whichever is the relevant trigger pursuant to paragraph 4.4.3, 4.4.4 and 4.4.5) unless and until the Owner has widened and resurfaced the extent of BW100 On-Site as shown on the PROW Plan to a width of 3 metres (unless agreed otherwise in writing with the County Council) to Highway Works Completion Certificate standard.
- 4.5 Unless otherwise agreed in this Schedule the Owner covenants with the County Council not to construct on or over any PROW or do anything on or over any PROW so as to compromise its use as a PROW and for the avoidance of doubt this paragraph will not affect the Owner's ability to undertake works affecting a PROW where those works have been provided for within a Highways Agreement.

5 OFF SITE PROW CONTRIBUTION

5.1 The Owner covenants to pay the Off Site PROW Contribution to the County Council prior to Commencement of the earlier of:

5.1.1 the Welborne Sports Hub Site; or

5.1.2 the A32 Development,

5.1.3 and not to Commence Development of either the Sports Provision or the A32 Development until the Off Site PROW Contribution has been paid to the County Council.

6 PROW COMMUTED SUM

6.1 The Owner covenants to pay the PROW Commuted Sum to the County Council calculated pursuant to the following formula:

$$A \times B = C$$

$$C \times D = E$$

Where:

A is the length of the new PROW to be established to serve the Development pursuant to the provisions of this Schedule OR the length of the PROW to be upgraded pursuant to the provisions of this Schedule

B is the Applicable PROW Maintenance Payment Rate

C is the maintenance cost of the relevant PROW

D is the number of Lifecycles maintenance agreed with the County Council for which the commuted sum must be paid in respect of the relevant PROW

E is the total commuted sum payable by the Owner in respect of the relevant PROW pursuant to the terms of this paragraph

6.2 The Owner covenants to pay the PROW Commuted Sum to the County Council as follows

6.2.1 to pay the commuted sum in respect of maintenance of FP23b North South upon the issue of the Highway Works Completion Certificate relating to the FP23b North South upgrade works where the relevant multiplier at D of the Formula is 2;

6.2.2 to pay the commuted sum in respect of maintenance of FP86 upon the issue of the Highway Works Completion Certificate relating to the FP86 upgrade works where the relevant multiplier at D of the Formula is 2;

6.2.3 to pay the commuted sum in respect of maintenance of FP101 upon the issue of the Highway Works Completion Certificate relating to the FP101 upgrade works where the relevant multiplier at D of the Formula is 2;

6.2.4 to pay the commuted sum in respect of maintenance of FP102 upon the issue of the Highway Works Completion Certificate relating to the FP102 upgrade where the relevant multiplier at D of the Formula is 2;

- 6.2.5 to pay the commuted sum in respect of maintenance of the Extension to BW101 upon the issue of the Highway Works Completion Certificate relating to the Extension to BW101 where the relevant multiplier at D of the Formula is 2;
- 6.2.6 to pay the commuted sum in respect of maintenance of the Fareham Common Bridleway upon the issue of the Highway Works Completion Certificate relating to the Fareham Common Bridleway where the relevant multiplier at D of the Formula is 2;
- 6.2.7 to pay the commuted sum in respect of maintenance of BW100 upon the issue of the Highway Works Completion Certificate relating to the BW100 upgrade where the relevant multiplier at D of the Formula is 1.5;
- 6.2.8 to pay the commuted sum in respect of maintenance of the Welborne Mile Link upon the issue of the Highway Works Completion Certificate relating to the Welborne Mile Link where the relevant multiplier at D of the Formula is 2; and
- 6.2.9 to pay the commuted sum in respect of maintenance of the New East West Link upon the issue of the Highway Works Completion Certificate relating to the New East West Link where the relevant multiplier at D of the Formula is 2.

SCHEDULE 13

M27 Improvement Works

1 DEFINITIONS

1.1 In this Schedule the following terms have the following meanings:

“A32 / Broadway Roundabout Works”	the provision of a new roundabout on the A32
“A32/North Hill Furze Court Works”	as defined in Schedule 8 of this Deed
“Balancing Payment”	the sum up to £15,000,000 (fifteen million pounds) payable by the Owner to the County Council (in accordance with the provisions of paragraph 2.6 of this Schedule) to be used towards the M27 Junction 10 Improvement Works
“Balancing Payment Surplus”	any sum up to the value of the Balancing Payment remaining after the payment at paragraph 2.6 of this Schedule is made by the Owner to the County Council
“Commencement of M27 Junction 10 Improvement Works”	the commencement of the M27 Junction 10 Improvement Works save that operations consisting of, ecological mitigation, archaeological investigations, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure for environmental mitigation, the temporary display of site notices or advertisements shall not amount to Commencement of the M27 Junction 10 Improvement Works (and “Commence” and “Commenced” shall be construed accordingly)
“Contractor”	the body appointed to undertake the completion of the design and construction of the M27 Junction 10 Improvement Works and “Contractors” shall be construed accordingly
“Cost Over-Run Contribution Request”	one or more requests to the Owner within the Cost Over Run Period from the County Council and/or the Delivery Body to utilise all or part of the Cost Over-Run Contribution, and following any such request payment to be made to the County Council and/or the Delivery Body within 28 days
“Cost Over-Run”	any cost reasonably and properly incurred by the County Council and/or the Delivery Body in connection with or arising out of in the delivery of the M27 Junction 10 Improvement Works during the Cost Over Run Period and for the avoidance of doubt the Owner shall not be required to pay for any duplication in costs between the County Council and the Delivery Body.
“Cost Over-Run Contribution”	the maximum sum of £10,000,000 (ten million pounds), to be paid by the Owner to the County Council and/or Delivery Body to pay for any Cost Over-Run during the Cost Over Run Period

“Cost Over Run Period”	<p>the period of time from the Commencement of M27 Junction 10 Improvement Works up to and including the later of either;</p> <ul style="list-style-type: none"> (i) 12 years from the date of this Deed; or (ii) 7 years from the date the M27 Junction 10 Improvement Works are open to public traffic if no claims are received; or (iii) full and final settlement of all claims brought within the 7 year period at point (ii) above
“Delivery Body”	the body responsible for and takes primary responsibility for the delivery of the M27 Junction 10 Improvement Works
“Design and Build Contract”	a commercial contract or contracts by which the Contractor is appointed to undertake design and works which will include but not be limited to the completion of the design and delivery of the M27 Junction 10 Improvement Works
“Final Stage Gate Assessment Certificate”	a final certificate issued by Highways England to confirm the transfer of that part of the M27 Junction 10 Improvement Works within the strategic road network into Highways England asset
“Gateway 2”	the point at which the County Council shall review and decide whether or not to make the Gateway 2 Decision to deliver the M27 Junction 10 Improvement Works following the completion of all design and approval work and the ‘final Total of the Prices’ has been received from the Contractor
“Gateway 2 Decision”	the County Council’s decision whether or not to commit to deliver the M27 Junction 10 Improvement Works at Gateway 2
“HIG Funding”	has the same meaning as in Clause 1 of this Deed
“Highways Completion Certification Standard”	has the same meaning as set out in Schedule 8 of this Deed;
“Highways Certification Standard”	means that the M27 Junction 10 Improvement Works have been constructed to a satisfactory standard as evidenced by the issuing of a certificate of completion (or equivalent

“M27 Junction 10”	certificate) for that part of the M27 Junction 10 Improvement Works within the local highway network and the issuing of a road opening notice for that part of the M27 Junction 10 Improvement Works within the strategic road network and for the avoidance of doubt both the certificate of completion (or equivalent certificate) and road opening notice will need to be issued simultaneously before the M27 Junction 10 Improvement Works are open to the public Junction 10 of the M27 Motorway
“M27 Junction 10 Improvement Works Contribution”	a contribution of £40,000,000 (FORTY MILLION POUNDS) payable by the Owner to the County Council (in accordance with the provisions of paragraph 2 of this Schedule) to be used towards the M27 Junction 10 Improvement Works for the avoidance of any doubt this contribution is not subject to Indexation;
“M27 Junction 10 Improvement Works”	<p>the improvements to the M27 Junction 10 to upgrade the existing partial moves junction to provide for all traffic movements to include but not be limited to the following</p> <ul style="list-style-type: none"> • the provision of an underpass underneath the M27 • a new eastbound off slip • an improved eastbound on slip; • a replacement westbound off slip; • a new westbound on slip; • improvements to the A32 including • the A32 Broadway Roundabout Works • a new east-west link road connecting the A32 from A32 Broadway Roundabout Works to the new High Street roundabout and then the new Welborne Approach roundabout and Welborne Approach link road which connects to the new underpass <p>as shown in principle on plans as appended</p> <ul style="list-style-type: none"> - CJ008926-ATK-HGN-J10-DR-CH-000002 Rev C04 Overview General Arrangement - CJ008926-ATK-HGN-J10-DR-CH-001001 Rev C02 General Arrangement (Sheet 01 of 03) - CJ008926-ATK-HGN-J10-DR-CH-001002 Rev C03 General Arrangement (Sheet 02 of 03)

“M27 Junction 10 Improvement Works Cost Summary Plan”	a cost summary plan compiled by the Delivery Body that will include the ‘Total of the Prices’ and will determine the sum of the Balancing Payment and all other related costs and fees for the delivery of the M27 Junction 10 Improvement Works including but not limited to all professional fees, legal and surveyors fees, claims and design costs;
“Total of the Prices”	the sum total of the lump sum prices for each of the activities on the activity schedule within the Design and Build Contract, unless later amended (by agreement between the Delivery Body and Contractor) in accordance with the Design and Build Contract
“Notice to Proceed”	the notice which may be either i) issued by the County Council to the Contractor and copied to the Owner following the Gateway 2 Decision by the County Council to proceed to deliver the M27 Junction 10 Improvement Works or ii) a notice issued by the Delivery Body (in the event the County Council does not issue a Notice to Proceed) to the Contractor copied to the County Council and Owner following the Delivery Body’s decision to proceed to deliver the M27 Junction 10 Improvement Works

2 M27 JUNCTION 10 IMPROVEMENT WORKS

- 2.1 The County Council shall request that the Delivery Body prepare a written programme for the delivery of the M27 Junction 10 Improvement Works prior to Occupation of the 1161st Residential Unit.
- 2.2 The County Council shall request that the Delivery Body ensures the A32/Broadway Roundabout Works are prioritised at the start of the main works contract for the M27 Junction 10 Improvement Works to enable the Owner to deliver the A32/North Hill/Furze Court Works in accordance with the provisions set out in Schedule 8 to Highways Completion Certificate Standard prior to completion of the M27 Junction 10 Improvement Works to Highways Certification Standard
- 2.3 The Owner covenants not to Occupy more than 1160 Residential Units unless and until the M27 Junction 10 Improvement Works have been completed to Highways Certification Standard
- 2.4 The County Council will request that the Delivery Body provide the Owner with a M27 Junction 10 Improvement Works Cost Summary Plan (which will set out the amount of the Balancing Payment to be paid at paragraph 2.6) prior to the issuing of the Notice to Proceed
- 2.5 The Owner covenants with the Councils to pay the M27 Junction 10 Improvement Works Contribution to the County Council in the following instalments;
 - 2.5.1 £5,000,000 (five million pounds) to be paid within 10 Working Days of the County Council notifying in writing the Owner of the Gateway 2 Decision and for the avoidance of doubt the Owner covenants to pay this sum to the County Council regardless of the County Council’s decision whether or not to proceed and deliver the M27 Junction 10 Improvement Works

- 2.5.2 £20,000,000 (twenty million pounds) to be paid within but no later than 12 months of the payment falling due at paragraph 2.5.1 for the avoidance of doubt the Owner covenants to pay this sum to the County Council regardless of the County Council's decision whether or not to proceed and deliver the M27 Junction 10 Improvement Works
- 2.6 In the event the County Council's Gateway 2 Decision is to proceed and deliver the M27 Junction 10 Improvement Works the Owner covenants to pay the Balancing Payment no later than 6 months after the payment at paragraph 2.5.2 is due
- 2.6.1 should the amount of the Balancing Payment paid by the Owner in accordance with this Schedule be less than £15,000,000 (fifteen million pounds) any Balancing Payment Surplus up to the amount of £15,000,000 (fifteen million pounds) shall remain payable by the Owner as part of the M27 Junction 10 Improvement Works Contribution and any further sum or sums of money requested from the Balancing Payment Surplus may be requested by the County Council (and for the avoidance of doubt one or more requests may be made during the Cost Over Run Period) up to and including the point at which the Balancing Payment Surplus is zero.
- 2.6.2 Upon receipt of a request for a payment pursuant to paragraph 2.6.1 from the Balancing Payment Surplus the Owner covenants to pay the sum requested within 10 Working Days and shall not Occupy any further Residential Unit unless and until the payment has been made to the County Council in accordance with the request for payment.
- 2.7 In the event the County Council's Gateway 2 Decision is not to proceed and not deliver the M27 Junction 10 Improvement Works the Owner covenants to pay £15,000,000 (15 million pounds) 18 months after the payment at paragraph 2.5.1 is due.
- 2.8 Following receipt of the payments made pursuant to paragraphs 2.5 and 2.6 and 2.7 the County Council shall forward the M27 Junction 10 Improvement Works Contribution to the Delivery Body
- 2.9 Upon receipt of a Cost Over Run Contribution Request, the Owner will pay the sum set out in the Cost Over Run Contribution Request and shall not Occupy any further Residential Unit after the payment request timescale has expired unless and until the Cost Over Run Contribution requested has been paid in full.
- 2.10 To the extent that any Balancing Payment and/or Balancing Payment Surplus and/or M27 Junction 10 Improvement Works Contribution or any part thereof remain unspent or is not unconditionally committed to be spent it will be returned to the Owner when Highways England have issued the Final Stage Gate Assessment Certificate PROVIDED THAT any sums returned to the Owner pursuant to this paragraph shall remain payable by the Owner upon request from the County Council and/or Delivery Body during the Cost Over Run Period
- 2.11 During the Cost Over Run Period (and/or such other period as provided in the Land Compensation Act 1973 and/or Limitation Act 1980 or any other enabling power as amended) the County Council and/or Delivery Body (where appropriate) can call on any unspent Cost Over Run Contribution to cover any additional costs and/or demands and/or expenses and/or claim and/or liability and/or land compensation claims associated with the M27 Junction 10 Improvement Works

- 2.12 The parties agree that a Cost Over Run Contribution Request will not be made until such time that the M27 Junction 10 Improvement Works Contribution and HiG Funding has been spent or are unconditionally committed to be spent

3 DELIVERY BODY

- 3.1 If the County Council's Gateway 2 Decision is not to commit and not to deliver the M27 Junction 10 Improvement Works it covenants it will transfer when received from the Owner the M27 Junction 10 Improvement Works Contribution and any received Cost Over Run Contribution and/or any received residual of the Balancing Payment, to the approved Delivery Body .
- 3.2 If the County Council's Gateway 2 Decision is to commit and to deliver the M27 Junction 10 Improvement Works and thereafter at any time ceases to be the Delivery Body it will transfer the remaining part of any received M27 Junction 10 Improvement Works Contribution and remaining part of any received Cost Over Run Contribution and/or any received Balancing Payment, to the replacement approved Delivery Body PROVIDED ALWAYS all outstanding claims and/or costs and/or expenses and/or liabilities incurred as a result of the M27 Junction 10 Improvement Works have been settled in full by the County Council as Delivery Body and/or local highway authority SAVE FOR all costs and/or liabilities and/or expenses incurred by the County Council pursuant to paragraph 2.11 above
- 3.3 At any stage during the Cost Over Run Period the County Council and/or the Delivery Body may submit to the Owner a Cost Over-Run Contribution Request
- 3.4 The Delivery Body (or the County Council until the Delivery Body is appointed) shall provide the Owner with quarterly updates on the progress of the M27 Junction 10 Improvement Works including an update on progress of the programme and costs and shall attend quarterly meetings (highlighting any significant changes)