

DATED

30th January

2019 2020

(1) IPSWICH BOROUGH COUNCIL

- and -

(2) EAST SUFFOLK COUNCIL

- and -

(3) SUFFOLK COUNTY COUNCIL

- and -

(4) JOHN FONNEREAU

- and -

(5) CREST NICHOLSON OPERATIONS LIMITED

**PLANNING OBLIGATION BY DEED
PURSUANT TO SECTION 106 OF THE
TOWN AND COUNTRY PLANNING
ACT 1990
RELATING TO
HENLEY GATE IPSWICH GARDEN
SUBURB, IPSWICH**

Certified a true copy of the original document


Authorised Officer Date 19.02.2020

Legal Services
Ipswich Borough Council
Grafton House
Russell Road
Ipswich IP1 2DG

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THIS DEED is made on

30th January

2020 2019

BETWEEN:

- (1) **IPSWICH BOROUGH COUNCIL** of Grafton House, 15-17 Russell Road, Ipswich, Suffolk, IP1 2DE ("**Borough Council**");
- (2) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("**Council**");
- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("**County Council**");
- (4) **JOHN FONNEREAU** of Alma House, Dereham Lane, Great Fransham, Dereham, Norfolk, NR19 2HZ ("**First Owner**"); and
- (5) **CREST NICHOLSON OPERATIONS LIMITED** (company registration number 01168311) whose registered office is at Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN ("**Second Owner**"); and

BACKGROUND:

- A The Borough Council and the Council are the local planning authorities for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations in this Deed are enforceable.
- B The Borough Council, Council and the County Council are the appropriate bodies to enforce this Deed for the purposes of section 106 of the 1990 Act.
- C The County Council is the local education authority, local library authority, local waste authority, local highway authority (except for trunk roads for 1990 Act) and is also a local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations in this Deed are enforceable.
- D The First Owner is the freehold owner of that part of the Site which registered at the Land Registry under title number SK396735.
- E The Second Owner is the freehold owner of that part of the Site registered at the Land Registry under title number SK88330.
- ~~F The Second Owner has entered into an agreement with the First Owner for the purchase of part of the Site with the intent that the Second Owner will develop the Site.~~
- ~~G~~ F The Second Owner submitted the Application to the Borough Council and the Council on 22 June 2016 to obtain Planning Permission.
- ~~H~~ G In considering the Application the Borough Council and the Council have had regard to their respective development plans and all other material considerations. The Borough Council and the Council consider it expedient in the interest of proper planning of its area and having regard to all other material considerations that provision should be made for regulating the Development and use of the Site in the manner set out in this Deed.
- ~~I~~ H The Parties have agreed to enter into this Deed as a planning obligation under the 1990 Act in order to secure the planning obligations contained in Schedules 1 to 16 to this Deed accepting

that those obligations are necessary to make the Development acceptable in planning terms; directly related to the Development; and fairly and reasonably related in scale and kind to the Development in compliance with Regulations 122 of the CIL Regulations.

4. I The Borough Council and the Council have resolved to grant Planning Permission subject to the conditions set out in the Planning Permission and subject to the covenants, undertakings and restrictions contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings:

"1972 Act" means the Local Government Act 1972;

"1980 Act" means the Highways Act 1980;

"1982 Act" means Local Government (Miscellaneous Provisions) Act 1982;

"1990 Act" means the Town and Country Planning Act 1990;

"2008 Act" means the Housing and Regeneration Act 2008;

"2011 Act" means the Localism Act 2011;

"Affordable Housing" shall have the meaning afforded to it in Annex 2 of the National Planning Policy Framework dated July 2019 (as may be amended from time to time or such other national policy that may from time to time replace and/or update this framework);

"Affordable Housing Contract" means a binding contract between the Owners and the Affordable Housing Provider for the transfer and construction of the Affordable Housing Units within a whole or part of a Phase to the Affordable Housing Provider;

"Affordable Housing Delivery Plan" means a plan for the delivery of Affordable Housing Units (excluding any Deferred Affordable Housing Units) within the whole or part of any relevant Phase of the Development that includes Affordable Housing Units to be approved by the Borough Council and shall include the details submitted pursuant to condition 18(i) of the Planning Permission detailing the type, tenure, size and location of the Affordable Housing Units and demonstrating that the mix of Affordable Housing Units proposed within the plan for the whole or part of that Phase accords with the Affordable Housing Mix as set out in Schedule 2 to this Deed and further demonstrating how the mix shall be secured across the remaining Phases within the first 400 Residential Units;

"Affordable Housing Mix" means the type, tenure and number of Affordable Housing Units as set out in paragraph 9 of Part 1 of Schedule 2 or otherwise agreed in writing at any time with the Borough Council;

"Affordable Housing Policy Requirement" means the Borough Council's Core Strategy Policy CS10 to seek to achieve up to 35% Affordable Housing across this Development in the Ipswich Garden Suburb (IGS) or such lower percentage in adopted policy as applicable at the relevant time;

"Affordable Housing Provider" means an Approved Affordable Housing Provider or another registered provider of social housing as defined in section 80(2)(a) of Part 2 of the Housing and Regeneration Act 2008 approved in accordance with paragraph 4 of Part 1 of Schedule 2;

"Affordable Housing Unit" means a Residential Unit provided as Affordable Housing (including any Deferred Affordable Housing Units) in Perpetuity (save where provided otherwise in paragraph 11.1 of Part 1 of Schedule 2 of this Deed);

"Affordable Rented Units" means those Affordable Housing Units that are to be let by Affordable Housing Providers to Eligible Households at rents (inclusive of all service charges and capped at 80% of Open Market Rents) and **"Affordable Rented"** is to be construed accordingly;

"Air Quality Monitoring Contribution" means the sum of £5,000 (five thousand pounds) Index Linked toward the air quality monitoring and implementing appropriate measures from the Borough Council's Air Quality Action Plan;

"Alternative Affordable Housing Provider (AAHP)" means Handford Homes Lettings Limited who is not an Affordable Housing Provider but is otherwise approved by the Council to manage Affordable Housing (including approval of the details of how it proposes to manage the relevant Affordable Housing Units);

"Alternative Diversion Route" means in relation to that part of the Temporary Diversion Route that is within the Site such alternative route as may be agreed between the County Council the Borough Council the Owner and the ~~Northern~~^{Northern} Land Owner (all acting reasonably) to secure a suitable and appropriate direct route from existing FP18 to Westerfield Road but within that part of the Site labelled G8 on Drawing number CG1003-OPA-003 Rev B located at Appendix 1 and in determining the location of any alternative diversion route within the Site consideration shall be given to avoiding any built development or associated infrastructure on the Site and the location of any proposals for development included in any Reserved Matters Approval(s) which relate to the relevant area of the Site at such time that the Temporary Diversion Strategy is submitted for approval;

"Application" means the application(s) for planning permission to authorise the Development on the Site with reference numbers: 16/00608/OUT and 16/2592/OUT made under the 1990 Act to the Borough Council and the Council;

"Approved Affordable Housing Providers" means Clarion Housing Group, Flagship Housing Group, Orbit East, Orwell Housing Association, Suffolk Housing (Iceni Homes); the AAHP PROVIDED THAT nothing in this Deed shall fetter the Borough Council's discretion to declare any one of the Approved Affordable Housing Providers no longer approved for the purposes of the Development and the Borough Council shall promptly notify the Owners in writing in such instances PROVIDED FURTHER THAT where the Borough Council have notified the Owners that any Approved Affordable Housing Provider is no longer approved this shall not have any effect on any Affordable Housing Contracts already entered into at the time of receipt of such notification and the Owners shall be entitled to continue to deal with such Affordable Housing Providers pursuant to any existing Affordable Housing Contracts AND the Owners shall be entitled to seek the Borough Council's approval to alternative and/or additional Affordable Housing Providers;

"Back to Back Agreement" means the agreement entered into on even date as this Agreement between the Second Owner and the Borough Council in relation to the passing down to the Second Owner of the provision of grant funding from Homes England to the

Borough Council pursuant to the Grant Funding Agreement towards the Development Costs associated with the HIF Funded Infrastructure Works;

"BC Contribution Underspend" means where the Purpose of a Borough Council Contribution(s) has/have been achieved at a cost lower than the Contribution paid;

"BCIS Indexation" means indexation by reference to the General Building Cost Index as published by the Royal Institute of Chartered Surveyors' Building Cost Information Service or any replacement of that index from time to time or (if there is no replacement of) such other appropriate alternative index agreed between the Parties;

"Borough Area" means the administrative area of the Borough of Ipswich;

"Borough Council Assessor" means such suitably qualified and experienced assessor who is a professional member of RICS of not less than 10 years' experience to be agreed by the Owners and the Borough Council;

"Borough Council Contributions" means those Contributions (including any Deferred Contributions) payable by the Owners to the Borough Council but excluding the Community Building Contribution;

"Bridge Plan" means drawing number 18837-SK06 at Annexure 1;

"Bus Service Contribution" means the sum of £605,000 (six hundred and five thousand pounds) Index Linked;

"Bus Stop Improvements Contribution" means the sum of £36,000 (thirty six thousand pounds) Index Linked;

"Bus Stop Plan" means the plan attached to this Deed at Appendix 5 entitled "Existing Bus Stops to be Improved";

"Challenged Permission" means the Planning Permission being the subject of any judicial review proceedings or other legal challenge by third parties including, but not limited to, the application for permission to apply for judicial review and "Challenge" will be interpreted accordingly;

"CIL" means the charge created pursuant to section 205 of the 2008 Act and regulation 3 of the CIL Regulations and referred to as the Community Infrastructure Levy in those enactments;

"CIL Regulations" means the Community Infrastructure Levy Regulations 2010 (as amended);

"Commencement Date" means the date of the Commencement of Development;

"Commencement of Development" means the carrying out of a Material Operation pursuant to the Planning Permission within the Site (and related expressions such as 'Commence Development' shall be construed accordingly);

"Commencement Notice" means written notice to be given by the Owners to the Borough Council, the County Council and the Council stating the Commencement Date;

"Commercial Unit" means any unit (including the Visitor Centre) which is not a Residential Unit forming part of the Development;

"Committed" means the expenditure of any Contribution or part Contribution or entrance into a Contributions Contract by the Borough Council or the County Council (as relevant) in order to discharge obligations on the Borough Council or the County Council (as relevant) or apply any monies in accordance with the provisions of this Deed;

"Community Building Contribution" means the sum of £900,000 (nine hundred thousand pounds) Index Linked toward the cost of providing a community building within Ipswich Garden Suburb which may include (but not be limited to) police accommodation and drop-in library services;

"Community Development Contribution" means the sum of £106,000 (one hundred and six thousand pounds) Index Linked towards a community development officer and community events and activities;

"Community Space" means a space of a minimum of 80 (eighty) square metres but subject to a maximum space of not more than 85 (eighty five) square metres within the Visitor Centre to be made available for multi community uses which for the avoidance of doubt such space may be shared with other appropriate Visitor Centre uses and constructed in accordance with the Community Space Framework;

"Community Space Framework" means a document which has been submitted to and approved in writing by the Borough Council pursuant to Schedule 6 of this Deed and detailing the proposed design specification and range of appropriate uses for the Visitor Centre;

"Completion" means the proper issue of a certificate of practical completion of any works carried out pursuant to this Deed or as the context may allow as part, section, Plot, Parcel or Phase thereof by an independent architect, engineer or other certifying professional as the case may be and the terms "Complete" and "Completed" and cognate expressions shall be construed accordingly;

"Construction Contract" means a contract for the construction and completion of the Pedestrian and Cycle Railway Bridge entered into by the Owners in such form as is custom and practice to use in the industry incorporating the programme for the completion of the Pedestrian and Cycle Railway Bridge by a specified completion date, documentary evidence of which shall be submitted to the Borough Council and County Council in writing;

"Construction Training and Employment Plan" means a Construction Training & Employment Plan which seeks to maximise job opportunities for residents of the Borough Area through:

- (a) the creation of job opportunities for the construction phases of the Development;
- (b) the provision of skills training;
- (c) the means for advertising all vacancies (including subcontractor organisation vacancies) arising during the construction of the development;
- (d) the identification of appropriate training courses and encouraging and assisting applicants for employment who are not currently qualified for a particular vacancy to obtain the necessary training and qualifications;

- (e) the means of recruitment of local staff through the Job Centre Plus and other professional recruitment partners, and
- (f) the means of ensuring and promoting equal opportunities as part of the employment process;

"Contributions" shall mean each of the following: Community Building Contribution, Deferred Contributions, Bus Service Contribution, Bus Stop Improvements Contribution, Community Development Contribution, Country Park Commuted Sum, Early Years Contribution, Primary Education Contribution, Secondary Education Contribution, Sixth Form Education Contribution, Public Rights of Way Contribution, Health Care Facilities Contribution, Library Contribution, Monitoring Contribution, Air Quality Monitoring Contribution, Habitats Assessment Regulations Monitoring Contribution, Off Site Sustainable Transport Contribution, Police Services Contribution, Primary School Design Fee, Traffic Management Contribution, Travel Plan Evaluation and Support Contribution, Secondary School Design Fee, Travel Plans Implementation Bond, Westerfield Station Improvements Contribution, Valley Road/Westerfield Road Roundabout Improvement Contribution, Vehicular Railway Bridge Commuted Sum and each in the singular or (if the context so permits) as to part shall be treated as a **"Contribution"**;

"Contributions Contract" means a contract which the Borough Council or the County Council (as relevant) has entered into before the Relevant BC Contribution Date, the Relevant CC Contribution Date, or Relevant Community Building Contribution Date or Relevant Underspend Date requiring another party to provide works, services or supplies (or any combination of them) and which the Borough Council or the County Council (as relevant) has entered into because the funding for it has been provided in accordance with this Deed;

"Contributions Monitoring Report" means a report prepared by the County Council detailing the County Council Contributions that have fallen due, whether the County Council Contribution has been paid or not by the Owners, and whether the County Council has expended the County Council Contributions for the Purposes set out in this Deed and, if so, to what extent;

"Contribution Reallocation Mechanism" means the reallocation of any BC and/or SCC Contribution Underspend in accordance with the provisions of clause 9.2

"Costs" means the total of all of the costs incurred by the Owners in connection with the Development the types of which are shown in the Viability Review Template and which include the actual capital costs associated with compliance with this Deed and compliance with any planning conditions imposed on the Planning Permission or Reserved Matters Approvals associated with the Development;

"Country Park" means that area of land of 30.5ha outlined in red for indicative purposes only on the plan at Appendix 2 and to be delivered in phases pursuant to the Country Park Programme;

"Country Park Area" means any part of Country Park which for the avoidance of doubt shall in aggregate total an area of 30.5ha and outlined in red on the plan at Appendix 2;

"Country Park Costs" means the sum of £4,225,000 (four million two hundred and twenty five thousand pounds) to be applied to the Country Park Phase Works but **excluding** any and all costs associated with the Country Park SuDs save for the design and installation of post-construction planting;

"Country Park Phase Works" means any one of the Country Park Phase 1 to 7 Works which shall (in aggregate) comprise works across the whole of the Country Park Area and individually and collectively may also include landscaping of land art and post-construction planting of SuDs;

"Country Park Phase 1 Works" means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 1" and the detail of such works shall be undertaken in accordance with the relevant Country Park RM Approval;

"Country Park Phase 2 Works" means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 2" and the detail of such works shall be undertaken in accordance with the relevant Country Park RM Approval;

"Country Park Phase 3 Works" means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 3" and the detail of such works shall be undertaken in accordance with the relevant Country Park RM Approval;

"Country Park Phase 4 Works" means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 4" and the detail of such works shall be undertaken in accordance with the relevant Country Park RM Approval;

"Country Park Phase 5 Works" means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 5" and the detail of such works shall be undertaken in accordance with the relevant Country Park RM Approval;

"Country Park Phase 6 Works" means those planting and landscaping works listed on the Country Park Indicative Programme under the heading "Phase 6" and the detail of such works be undertaken in accordance with the relevant Country Park RM Approval;

"Country Park Phase 7 Works" means those works listed on the Country Park Indicative Programme (specifically the delivery of the Visitor Centre and all associated infrastructure including car parking and a DEAP and any associated landscaping) under the heading "Phase 7" and the detail of such works shall be undertaken in accordance with the relevant Country Park RM Approval;

"Country Park Commuted Sum" means the sum of £771,000 (seven hundred and seventy one thousand pounds) Index Linked toward the costs of managing and maintaining the Country Park;

"Country Park Completion Certificate" means a certificate issued or deemed to have been issued, by the Borough Council confirming (in respect of each individual Country Park Phase Works) that the relevant area of the Country Park has been laid out to its reasonable satisfaction and the issue of a "Country Park Completion Certificate" shall commence the Country Park Maintenance Period in respect of the relevant Country Park Phase Works and the certificate shall set out any snagging items (being works that have been completed but that are not considered to be of the required standard expected of the design) that are to be addressed within a period of 3 (three) months from issue of the relevant certificate or such longer period as may be agreed in writing by the Borough Council as relevant to the circumstances of the snagging items to be addressed;

"Country Park Final Certificate" means a certificate issued (or deemed to have been issued) by the Borough Council confirming that the relevant Country Park Phase Works have been maintained to its reasonable satisfaction during the Country Park Maintenance Period for

that Country Park Phase Works and any remedial works have been completed including but not limited to any snagging items identified within a Country Park Completion Certificate;

"Country Park HIF Repayment" means:

- (a) any and all of the CP HIF Allocation required to be repaid to Homes England pursuant to the Grant Funding Agreement; and
- (b) any interest levied on any monies required by Homes England to be repaid as may be levied pursuant to the Grant Funding Agreement; and
- (c) any costs levied by Homes England and/or the Borough Council in connection with such repayment pursuant to either Grant Funding Agreement and/or the Back to Back Agreement

"Country Park HIF Repayment Contribution"

- (a) the relevant proportion for each IGS Area of the CP HIF Allocation based on the following percentages and subject to the caps identified below:

IGS Area	%	CP Cap (based on £4,225,000)
Crest (Area N2a and N2b)	33.3	1,406,925
CBRE (Area N1a)	23.3	984,425
Mersea (Area N3a)	31.4	1,326,650
Ipswich School (Area N1b)	9	380,250
Red House (Area N3b)	3	126,750
	100	4,225,000

- (b) any interest levied on any monies required by Homes England to be repaid as may be levied pursuant to the Grant Funding Agreement PROVIDED THAT any interest which is claimed in relation to the repayment of any part of the CP HIF Allocation is paid by the owners of the relevant IGS Area in the percentages specified in the definition of IGS Area Proportions; and
- (c) any costs levied by Homes England and/or the Borough Council in connection with such repayment pursuant to either the Grant Funding Agreement and/or the Back to Back Agreement PROVIDED THAT any costs which are claimed in relation to the repayment of any part of the HIF are paid by the owners of the IGS Areas in the percentages specified in the definition of IGS Area Proportions

And where development pursuant to an IGS Area Permission has not begun for the purposes of section 56 of the 1990 Act at the date that a Country Park HIF Repayment Contribution falls due to be paid pursuant to the Grant Determination Agreement and the Second Owner makes payment of the whole (or that part which would otherwise have been the responsibility of another IGS Developer) of the Country Park HIF Repayment to the Borough Council pursuant to the Back to Back Agreement to enable the Borough Council to repay Homes England pursuant to the Grant Funding Agreement the Country Park HIF Repayment Contribution for that IGS Area for which the development of the IGS Area Permission has not begun shall be deemed to be Index Linked from the date that the Country Park HIF

Repayment falls due to be repaid pursuant to the Grant Determination Agreement until the date of receipt by the Borough Council from the owners of the relevant IGS Area of the Country Park HIF Repayment Contribution

"Country Park Indicative Programme" means the indicative phasing for the delivery of the Country Park as annexed to this Deed at Appendix 2;

"Country Park Maintenance Period" means a period of not less than 12 (twelve) months from the date of issue of the relevant Country Park Completion Certificate in respect each of the Country Park Phase Works which shall end upon the later of the issue of a Country Park Final Certificate in respect of the relevant Country Park Phase Works or the transfer of the relevant part of a Country Park Area to the Borough Council;

"Country Park Management and Maintenance Strategy" means a written strategy for the overall management and maintenance of the Country Park, the Visitor Centre and any art work to include cleaning, lighting, safety, access and security to be approved pursuant to the Planning Permission;

"Country Park Programme(s)" means the programme(s) for the delivery of the Country Park Phase Works which is to be agreed by the Owners and the Borough Council in accordance with paragraph 1 of Part 1 of Schedule 6 of this Deed (which may be submitted as a single programme in relation to the whole of the Country Park Phase Works or as multiple programmes in relation to various Country Park Phase Works) PROVIDED THAT the first Country Park Programme submitted in accordance with paragraph 1 of Part 1 of Schedule 6 shall as a minimum relate to the entirety of the Country Park Phase 1 Works) and which shall be broadly in accordance with the Country Park Indicative Programme unless otherwise agreed in writing between the parties acting reasonably;

"Country Park RM Application(s)" means an application(s) for any Reserved Matters Approval of all or any part of the Country Park Phase Works;

"Country Park RM Approval(s)" means the grant of any reserved matters consent pursuant to the Country Park RM Application;

"Country Park SuDS" means the SuDS located within Country Park;

"Country Park SuDS Certificate" means a certificate to be provided by the Owners to the Borough Council from a suitably qualified engineer of at least 10 years' experience and a member of the Institute of Civil Engineering to confirm that the Country Park SuDS are fit for purpose and have been maintained to a reasonable standard throughout the relevant Country Park Maintenance Period;

"Country Park Transfer" means any transfer to the Borough Council of the unencumbered freehold interest in any part of a Country Park Area (any such area to be in accordance with the approved Country Park Transfer Plan) and any such transfer shall:

- (a) be unencumbered;
- (b) be free from contamination which would prevent the use of the Country Park Area as a Country Park;
- (c) be following all necessary archaeological surveys having been completed;

- (d) Free of any services and/or service media in, on or under the Country Park Area save for the Country Park SuDS, and those services required to be provided in accordance with Schedule 7 and underground electricity cables and such other services and service media as may be agreed between the parties to the transfer (save where such underground electricity cables and other services and/or services media located in under or over the Country Park have been approved pursuant to any planning condition then it shall be deemed agreement between the parties has been given for such cables, services and/or service media);
- (e) not include any terms which would restrict public access save for the purposes of maintenance works or in the case of emergency;
- (f) not include any terms which would directly or indirectly affect the construction, servicing or occupation of the part of the Site that is to be retained by the Owners;
- (g) subject to demonstrating to the Borough Council's reasonable satisfaction that sufficient public liability insurance is in place, include any reasonable reservation of rights of access and services over the Country Park Area for the purposes of carrying out any future Country Park Phase Works (including access to undertake works to form land art and/or soil mounding features within the transferred Country Park Areas subject to the Borough Council's prior written approval of such works) and also works in accordance with any agreed Remediation Strategy as shall be required for the Country Park SuDS and/or maintaining the same and (subject to any necessary approval or agreement required in accordance with paragraph (d) for the purposes of laying, managing, maintaining, replacing, renewing, cleaning and repairing services including but not limited to sustainable urban drainage measures, water, gas, sewerage, drainage or electricity (as applicable);
- (h) include for the benefit of the Country Park Area the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the Country Park Area over any adjoining land for its intended purposes as set out in Schedule 6
- (i) be for a consideration of no more than £1 (one pound);
- (j) include a covenant that the Owners shall bear the reasonable legal and professional costs of the Borough Council and any SDLT liability resulting from any such transfer; and
- (k) include a covenant that the Country Park Area shall not be used for any purpose other than for public open space and any community/public events as may take place from time to time;

"Country Park Transfer Plan" means a plan to be submitted to and approved in writing by the Borough Council identifying both the proposed number of transfers and the area of each part of the Country Park which is to be included in any Country Park Transfer which may be varied from time to time as provided for in paragraph 16 of Part 1 of Schedule 6;

"County Council Contributions" means those Contributions payable by the Owners to the County Council;

"CP HIF Allocation" means the sum of £4,225,000 (four million two hundred and twenty five thousand pounds) the total amount of the HIF allocation identified for use in payment of

the Development Costs of the Country Park PROVIDED THAT such sum shall be reduced to reflect any withdrawal of all or any part of this sum by Homes England pursuant to the Grant Funding Agreement;

"CP Phase Account" means written statements prepared by the Second Owner in respect of each of the Country Park Phase Works setting out all Development Costs actually incurred in connection with that phase (including such invoices tender receipts or otherwise that set out costs incurred) and which shall identify any and all CP HIF Allocation in relation to the Country Park Phase Works to which the respective CP Phase Account relates received by the Second Owner which has not been required to be repaid by Homes England and/or the Borough Council and which shall set out the CP Withdrawal Costs relating to the specific Country Park Phase Works;

"CP Withdrawal Costs" means the sum of the Development Costs actually incurred associated with the design, delivery construction and short-term maintenance (up to a maximum of £330,000 (three hundred and thirty thousand pounds) only in respect of any maintenance of the Country Park Phase Works) of the respective Country Park Phase Works to which the CP Phase Account within which the CP Withdrawal Costs are specified (including such invoices tender receipts or otherwise that set out costs incurred) and excluding any and all CP HIF Allocation in relation to the Country Park Phase Works to which the respective CP Phase Account relates received by the Second Owner which has not been required to be repaid by Homes England and/or the Borough Council such CP Withdrawal Costs as agreed or determined in accordance with paragraph 3 of Part 2 of Schedule 4;

"Deferred Affordable Housing" means the Deferred Affordable Housing Units or the Deferred Affordable Housing Contribution;

"Deferred Affordable Housing Contribution" means any financial contribution for the provision of off-site Affordable Housing the precise value of which will be calculated in accordance with paragraph 5 of Part 2 of Schedule 2

"Deferred Affordable Housing Scheme" a scheme specifying the quantum, size, mix, tenure, timetable for delivery and location of the Deferred Affordable Housing Units across the remaining parts of the Development (being 1,100 (one thousand and one hundred) Residential Units in connection with any Early Viability Assessment submitted pursuant to paragraph 1.1 of Part 2 of Schedule 2; 700 (seven hundred) Residential Units in connection with the Viability Assessment submitted pursuant to paragraph 1.2 of Part 2 of Schedule 2 and 400 (four hundred) Residential Units in connection with the Viability Assessment pursuant to paragraph 1.6 of Part 2 of Schedule 2) with reference to plans and drawings approved as part of the Application, which:-

is submitted by the Owners with any Viability Assessment and

is either:-

- (a) agreed by the Borough Council and the Owners; or
- (b) determined by the Expert;

"Deferred Affordable Housing Units" means any Affordable Housing Units to be provided as part of the Development including the baseline 5% (five per cent) of all Residential Units to be provided as Affordable Housing Units pursuant to Part 1 of Schedule 2 of this Deed up to an overall maximum of 35% (thirty five per cent) of the Residential Units within the

Development being required as a result of any Viability Review undertaken in accordance with Part 2 of Schedule 2 (subject at all times to the provisions contained within paragraphs 5 and 6 of Part 2 to Schedule 2) and secured in accordance with any Deferred Affordable Housing Scheme;

"Deferred Contributions" means the Deferred Affordable Housing Contribution, the Deferred Swimming Facilities Contribution and the Deferred Waste Facilities Contribution;

"Deferred Swimming Facilities Contribution" means any financial contribution for the provision of Swimming Facilities (up to a maximum of £466,000 (four hundred and sixty six thousand pounds (Index Linked)) the precise value of which will be calculated in accordance with paragraph 5 of Part 2 of Schedule 2;

"Deferred Waste Facilities Contribution" means any financial contribution for the provision of Waste Facilities (up to a maximum of £95,392 (ninety five thousand three hundred and ninety two pounds) Index Linked the precise value of which will be calculated in accordance with paragraph 5 of Part 2 of Schedule 2;

"Destination Equipped Area of Play (DEAP)" means destination play facilities which attract family groups from a wider catchment and for a longer visit including not less than 10 (ten) items of equipment providing a wide range of activities;

"Development" means the mixed use development to be provided on the Site comprising up to 1,100 residential dwellings (use class C3); a local centre (to accommodate up to 250sqm (net) of convenience floor space (A1), up to 300sqm of comparison floorspace (A1), up to 250sqm in use classes A1-A5 and up to 500sqm community centre (D1); provision of land for a primary school (D1); provision of sports facilities, Country Park (including visitor centre (D1)) and open space (including amenity space, children's play areas and allotments) and sustainable urban drainage systems; and associated landscaping, infrastructure and engineering/ earthworks; and the creation of two new vehicular accesses from Henley Road, one vehicular access from Westerfield Road (to serve country park only), and provision of access points to allow for pedestrian/cycle bridge over railway and vehicular bridge over railway as set out in the Application;

"Development Costs" means the costs for the design, remediation, demolition, site investigation, ecological works, construction of the HIF Funded Infrastructure Works, tender costs, landscaping and incidental works and all ancillary costs including payments or contributions under any Planning Agreement, the cost of bonds, deposits or other security to secure the provision of the works, the Pedestrian and Cycle Railway Bridge Commuted Sum, the Vehicular Railway Bridge Commuted Sum (and for the avoidance of doubt shall not include the Country Park Commuted Sum) costs of maintenance cleansing and remedial works in relation to the relevant infrastructure pending adoption by the appropriate authority and all professional fees and expenses which have been or will be reasonably and properly incurred by the Second Owner (or a contractor, developer and/or Site owner) in carrying out the relevant HIF Funded Infrastructure Works, such costs must constitute capital expenditure in accordance with Regulations made under the Local Government Act 2003;

"Early Viability Assessment" means an open book assessment prepared by or on behalf of the Owners and submitted to the Borough Council pursuant to paragraph 1.1 of Part 2 of Schedule 2 and which shall assess the viability of the Development as a whole and which shall not (unless otherwise agreed by the Borough Council) have any regard to the Viability Review Template and/or Viability Review Explanatory User Guide and any assumptions contained within those documents and shall for all purposes be a reassessment of the viability of the Development as at the date it is undertaken;

"Early Viability Review Date" means (subject to paragraph 2 of Part 1 of Schedule 2) two years from the date of receipt of a detailed planning permission for the construction of the whole or part of the first residential Phase of Development (which for the avoidance of doubt shall include all relevant reserved matters for the whole or part of that Phase);

"Early Viability Surplus" means the sum agreed or determined as part of an Early Viability Review Assessment in accordance with the relevant provisions of Part 2 of Schedule 2 100% (one hundred per cent) of which shall be applied to Deferred Affordable Housing Units and/or Deferred Contributions and/or to the recovery of HIF;

"Early Years Contribution" means the sum of £765,370 (seven hundred and sixty five thousand three hundred and seventy pounds) Index Linked;

"Early Years Setting" means an early years setting of at least 74 (seventy four) places to be constructed whether or not by the County Council to be co-located with the Primary School on the Primary School Site;

"Eligible Households" means a person or persons in need of accommodation who are unable to rent or buy on the local open market determined in accordance with the Borough Council's housing allocation policy or as otherwise approved by the Borough Council or by mutual exchange in accordance with section 158 of the 2011 Act;

"Environmental Statement" means the environmental statement submitted with the Application and dated June 2016 and addendum dated 22 February 2018;

"Expert" means such expert as may from time to time be appointed for the purposes of resolving a relevant dispute as follows or as otherwise agreed between the parties:

- (a) save as paragraph (b) below requires if the dispute relates to transport or highway works, engineering, demolition, SuDS, or construction works, a chartered civil engineer being a member of the Institution of Civil Engineers (having not less than 10 (ten) years' relevant experience in the public or private sector) agreed by the parties to the dispute but in default of agreement appointed at the request of any of the parties by or on behalf of the President of the Institution of Civil Engineers;
- (b) if the dispute relates to any building within the Development, or other property or similar matters, a chartered surveyor (having not less than 10 (ten) years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President of the Royal Institute of Chartered Surveyors;
- (c) if the dispute relates to bus operational matters, a chartered transport planner being a member of TPS, CIHT, ICE or RTPI (having not less than 10 (ten) years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the Chairman of the Transport Planning Society;
- (d) if the dispute relates to the viability of the Development of the Site specifically whether a Surplus has arisen, or the value of the Surplus, or the proposed use of the Surplus and the associated viability connected with a Deferred Affordable Housing Scheme, or in any other way relates to the viability of the Affordable Housing to be provided on the Site, such dispute shall upon the dispute arising be referred to an independent and fit person of at least 10 (ten) years' professional

experience of the matter in issue holding appropriate professional qualifications to be appointed by the President of the Royal Institution of Chartered Surveyors unless the parties have previously agreed the identity of the expert to be appointed;

- (e) if the dispute relates to financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant, a chartered accountant (having not less than 10 (ten) years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President of the Institute of Chartered Accountants in England and Wales;
- (f) if the dispute relates to the sign off/certification of any Country Park Phase Works in accordance with Schedule 6 such dispute shall be referred to an independent and fit person of at least ten years professional experience of the matter in issue holding appropriate professional qualifications agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the Chairman of the Institute of Landscape and Visual Architects;
- (g) if the dispute relates to any matters pertaining to the survey/assessment of potential contamination in respect of the Country Park SuDs in accordance with Schedule 6 such dispute shall be referred to an independent and fit person of at least ten years profession experience of the matter in issue holding appropriate professional qualifications agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the Chairman of the Institute of Civil Engineers; and
- (h) if the parties to the dispute shall fail to agree upon the nature or difference in question then it should be referred to a solicitor or barrister of a least 15 (fifteen) years' standing agreed by the parties but in default of agreement appointed at the request of either party by or on behalf of the President of the Law Society;

"Final Account" means a written statement prepared by the Second Owners setting out all Development Costs actually incurred in connection with the Pedestrian and Cycle Railway Bridge and the Vehicular Railway Bridge (including such invoices tender receipts or otherwise that set out costs incurred) and which shall attribute such costs to each of the said bridges and confirm if there has been a P&C Shortfall and/or Vehicular Surplus and a P&C Overspend;

"Final Disposal" means the abandonment, loss or final disposal of a Challenge and the expiry of any time period within which an appeal against such loss or final disposal must be made where no such appeal has been applied for;

"Final Withdrawal Account" means a written statement prepared by the Second Owners setting out all Development Costs actually incurred in connection with the Pedestrian and Cycle Railway Bridge (including such invoices tender receipts or otherwise that set out costs incurred) and which shall identify any HIF P&C Allocation received by the Second Owner which has not been required to be repaid by Homes England and/or the Borough Council which shall set out the P&C Withdrawal Costs;

"Financial Information" means such information as reasonably requested by the Borough Council which identifies the actual costs incurred (if any) in delivering and/or funding all or part of the Valley Road/Westerfield Road Roundabout Improvements;

"First Committee Resolution" means the resolution of the Borough Council's planning committee dated 8 February 2017 to grant Planning Permission for the Development subject to the completion of an agreement pursuant to section 106 of the 1990 Act;

"Foul/Surface Water Drainage and Sewerage" means the sewers and drains to be constructed or completed within the Site pursuant to the Planning permission or such sewers and drains that may already exist at the time the planning permission is granted;

"FP18" means the existing public footpath known as Footpath 18

"Fully Serviced" means the relevant Self Build Plot has proper connections within its boundary so as to connect it to the SuDs facilities and to mains foul drainage water gas electricity and telecommunications (or any such other service that may be agreed between the parties) and enjoys direct access to public highway or a roadway constructed to adoptable standards (connecting to the public highway);

"Full Travel Plan" means a fully developed travel plan based on the Interim Travel Plan and travel monitoring data of the end users providing a package of measures aimed at promoting more sustainable travel choices and reducing reliance on the private car in relation to the Development;

"Gateway to Home Choice Regional CBL" means the choice based lettings system where Affordable Rented Units are advertised and Eligible Households are able to express their interest and choice for the properties they would like to live in;

"Grant Funding Agreement" means the agreement entered into by Homes England and the Borough Council dated 2 October 2019 in relation to the provision of grant funding towards the Development Costs associated with the HIF Funded Infrastructure Works;

"Green Infrastructure" means those areas of greenspace to be provided within the Development and to be approved as part of the details submitted pursuant to condition 18 (v) of the Planning Permission;

"Guarantee" means of a guarantee from Crest Nicholson Plc (Company registration number 1040616) underwriting the payment of the SuDS Remediation Costs in such form as the Borough Council shall reasonably require (including but not limited to details of and a mechanism for the Borough Council to enforce such guarantee should the Owners default in their implementation of the Remediation Strategy) or such other guarantor that the Borough Council may approve in writing of similar financial standing;

"Habitats Regulations" means the Conservation of Species and Habitats Regulations 2017;

"Habitats Regulations Assessment Monitoring Contribution" means the sum of £7,500 (seven thousand five hundred pounds) Index Linked toward the funding of off-site conservation measures including monitoring of visitor disturbance to the Special Protection Area and RAMSAR site at Orwell Park/Piper's Valley;

"Health Care Facilities Contribution" means the sum of £430,000 (four hundred and thirty thousand pounds) Index Linked toward the funding of Health Care Facilities;

"Health Care Facilities" means a health care centre and/or ancillary or support health care facilities to be provided within the Site or within the vicinity of for the provision of health care;

"HIF Funded Infrastructure Works" means the works to:

- (a) design, deliver, construct, maintain and secure the adoption of the Pedestrian and Cycle Railway Bridge and the Vehicular Railway Bridge; and
- (b) design, deliver, construct and maintain the Country Park (such maintenance works to attribute no more than £330,000 (three hundred and thirty thousand pounds) of the CP HIF Allocation) and secure the transfer of the Country Park to the Borough Council (excluding legal and/or other professional or statutory fees to effect such transfer);

"HIF P&C Allocation" means the sum of £1,310,063 (one million three hundred and ten thousand and sixty three pounds) being the total amount of the HIF P&C Allocation for use in paying for the Development Costs associated with the Pedestrian and Cycle Railway Bridge PROVIDED THAT such sum shall be reduced to reflect any withdrawal of all or any part of this sum by Homes England pursuant to the Grant Funding Agreement;

"HIF Repayment" means

- (a) any and all of the HIF P&C Allocation required to be repaid to Homes England pursuant to the Grant Funding Agreement;
- (b) any interest levied on any monies required by Homes England to be repaid as may be levied pursuant to the Grant Funding Agreement; and
- (c) any costs levied by Homes England and/or the Borough Council in connection with such repayment pursuant to either the Grant Funding Agreement and/or the Back to Back Agreement;

"HIF Vehicular Allocation" means the sum of £4,333,288 (four million three hundred and thirty three thousand two hundred and eighty eight pounds) being the total amount of the HIF Allocation for use in payment for the Development Costs associated with the Vehicular Railway Bridge PROVIDED THAT such sum shall be reduced to reflect any withdrawal of all or any part of this sum by Homes England pursuant to the Grant Funding Agreement;

"Homes England" means the organisation empowered to regulate registered providers of Affordable Housing under the Housing and Regeneration Act 2008 or any successor body having functions currently exercised by the Homes and Communities Agency (trading as Homes England);

"Housing Infrastructure Funding" means the government's capital grant programme details of which published on announced on 4 July 2017 with confirmation of the Borough Council's successful bid announced on 1 February 2018 and "HIF" shall be construed accordingly;

"IGS Area" means any or all of the following as the context may require and as shown on the plan entitled IGS Area Proportions Plan in Appendix 1:

IGS Area
Site (Area N2a and N2b)
CBRE (Area N1a)
Mersea (Area N3a)
Ipswich School (Area N1b)

"IGS Area Permission" means any planning permission on any IGS Area (excluding the Planning Permission) granted in accordance with the IGS Supplementary Planning Document and the IDP and which may be granted within 15 years of the date of this Agreement;

"IGS Area Planning Obligation(s)" means any planning obligation entered into in connection with an IGS Area Permission; in accordance with section 106 of the 1990 Act; in compliance with regulation 122 of the CIL Regulations; and made between any one or more of the IGS Area owners and the Borough Council and/or the County Council;

"IGS Area Proportion" means in relation to each of the areas shown on the plan entitled IGS Area Proportions Plan on Appendix 1 based on the estimated dwelling numbers:

IGS Area	%
Site (Area N2a and N2b)	33.3
CBRE (Area N1a)	23.3
Mersea (Area N3a)	31.4
Ipswich School (Area N1b)	9
Red House (Area N3b)	3

"IGS Area Withdrawal Payment" means the relevant IGS Area Proportion for the respective IGS Area of the CP Withdrawal Costs which shall be Index Linked from the date the respective CP Phase Account is submitted to the Borough Council until the date of receipt by the Borough Council of the relevant IGS Area Withdrawal Payment from the relevant owner of the IGS Area to which the payment relates and falls due to be paid PROVIDED THAT the aggregate sum of any and all IGS Area Withdrawal Payments (net of indexation) shall be as follows for each IGS Area:

IGS Area	IGS Area Withdrawal Payment Cap (£)
Site (Area N2a and N2b)	1,406,925
CBRE (Area N1a)	984,425
Mersea (Area N3a)	1,326,650
Ipswich School (Area N1b)	380,250
Red House (Area N3b)	126,750

"IGS Delivery Board Terms of Reference (ToR)" means the terms of reference for the IGS Delivery Board set out in Appendix 10 to this Deed;

"Index" means the RPI Indexation in respect of the Community Development Contribution, the Community Building Contribution, the Police Services Contribution, the Air Quality Monitoring Contribution, the Habitats Regulations Assessment Monitoring Contribution, Travel Plans Implementation Bond, Bus Service Contribution, Country Park Commuted Sum, Monitoring Contribution, Travel Plans Evaluation and Support Contribution and the Library Contribution and BCIS Indexation for all other Contributions;

"Index Linked" means indexation payable by reference to the relevant Index and calculated in accordance with clause 23 of this Deed and the word "indexation" shall be construed accordingly;

"Infrastructure Delivery Plan (IDP)" means the infrastructure delivery plan dated 22 February 2017;

"Interest" means interest at four per cent above the base lending rate of the Bank of England from time to time;

"Intermediate Affordable Housing Units" means Affordable Housing Units (which are not Affordable Rented Units) to be made available to Eligible Households either to buy at a discount of at least 20% (twenty per cent) of the local open market value or to rent or to rent to buy including but not limited to Intermediate Market Rent, Shared Ownership and Shared Equity or such other intermediate tenures as may be included in the definition of Affordable Housing from time to time and **"Intermediate Affordable Housing"** is to be construed accordingly;

"Intermediate Market Rent" means a rent that is set at least 20% (twenty per cent) below Open Market Rent;

"Interim Travel Plan" means the approved interim travel plan dated July 2017 and attached to this Deed at Appendix 8;

"Ipswich Garden Suburb" means the area identified in policy CS10 of the Ipswich Borough Council Core Strategy (February 2017) (the "Core Strategy") and the Ipswich Garden Suburb (IGS) SPD

"Ipswich Garden Suburb (IGS) Delivery Board" means a delivery board established as a not for profit organisation to oversee the delivery phases of the Ipswich Garden Suburb and to work towards assisting and facilitating (where possible) a co-ordinated delivery of the Development in accordance with the Core Strategy, IGS IDP, IGS SPD, approved plans, associated planning conditions and this Deed. The purpose and objectives of the Delivery Board will be based upon those set out in the Ipswich Garden Suburb SPD and **"IGS Delivery Board"** shall be construed accordingly;

"Ipswich Garden Suburb (IGS) SPD" means the Ipswich Garden Suburb Supplementary Planning Document dated 22 March 2017;

"Legal Completion" means completion of a legal transfer of a freehold interest or the completion of the grant of a leasehold interest (as appropriate);

"Library Contribution" means the sum of £8,372 (eight thousand three hundred and seventy two pounds) Index Linked;

"Maintenance and Management Schemes" means the Open Space Maintenance and Management Scheme and the SuDs Maintenance and Management Scheme;

"Management Company" means a management company to be approved in writing by the Borough Council which is a private limited company to be established by the Owners or an existing company (registered at Companies House) or other body approved by the Borough Council in accordance with Schedule 8 of this Deed the purpose of which will be (amongst other things) to manage and maintain the common parts of the Development which will include any SuDS not transferred to the Borough Council or to a statutory drainage authority, any estate roads not adopted by the County Council, all Open Space (excluding the Country Park) and until the following are adopted both the Vehicular Railway Bridge Highway Link and Pedestrian and Cycle Railway Bridge Link;

"Market Value Unit" means a Residential Unit that is not an Affordable Housing Unit;

"Material Operation" means any material operation within the meaning of sections 56(4) of the 1990 Act PROVIDED THAT the carrying out of:

- (a) archaeological investigations;
- (b) decontamination works;
- (c) environmental site investigations;
- (d) fencing erected for ecological reasons subject to the prior approval of the Borough Council or the Council of the details of such fencing;
- (e) investigation works;
- (f) site reclamation;
- (g) site clearance including earthworks, re-grading and landscape clearance works;
- (h) termination or diversion of existing services;
- (i) provision of temporary construction site accommodation;
- (j) erection of hoardings, temporary enclosures, fences and other security measures;
- (k) provision of temporary haul roads; and
- (l) works and operations to enable any of the foregoing to take place,

shall not constitute a material operation for the purposes of this definition and shall not therefore constitute Commencement of the Development for the purposes of this Deed;

"Monitoring Contribution" means the sum of £10,000 (ten thousand pounds) Index Linked to be paid in accordance with the terms at paragraph 2 of Schedule 1 to this Deed;

"Necessary Consents (Pedestrian & Cycle Railway Bridge)" means all necessary consents approvals lease licence easements or any other agreements required to be obtained by the Owners from relevant stakeholders including but not limited to Network Rail and the Southern Landowner to the Site for the construction and completion of the Pedestrian and Cycle Railway Bridge;

"Necessary Consents (Vehicular Railway Bridge)" means all necessary consents approvals lease licence easements or any other agreements required to be obtained by the Owners from relevant stakeholders including but not limited to Network Rail and the Southern Landowner to the Site for the construction and completion of the Vehicular Railway Bridge;

"Northern Pedestrian Temporary Footpath Land" means the land on which the provision of the Temporary Diversion Route may be located on the Site (such route is shown illustratively on the Temporary Diversion Strategy Drawing by pink dashed lines and blue dashed lines);

"Occupation" means the first use or occupation of the Residential Units for the purposes permitted by the Planning Permission save for temporary occupation for the purposes of

construction or fitting out or commissioning or marketing or site security and "Occupy", "Occupying", "Occupiers", "Occupied" and cognate expressions shall be construed accordingly;

"Off Site Sustainable Transport Contribution" means the sum of £275,078 (two hundred and seventy five thousand and seventy eight pounds) Index Linked;

"Off Site Sustainable Transport Measures" means the improvements to the identified routes shown on the Henley Gate, Ipswich - Off-Site Pedestrian and Cycle Improvements Figure 3 document drawing at Appendix 9;

"On Site" means on land within the Site;

"Open Market Rent" means the rent calculated in accordance with the definition of "Market Rent" at Practice Statement 3.4 of the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards (6th Edition) or such amended definition as may replace it from time to time;

"Open Space" means each area of public open space and Green Infrastructure within the Development (excluding the Country Park) including play equipment to be laid out in accordance with the Planning Permission;

"Open Space Maintenance and Management Scheme" means a written scheme for the on-going management and maintenance of the Green Infrastructure and Open Space (to be approved as part of the details submitted pursuant to condition 18(v) of the Planning Permission) and which shall include but not be limited to the following:

- (a) frequency of maintenance;
- (b) measures to replace any trees, shrubs, hedgerows or turf which may die or become diseased;
- (c) maintenance and repair of play equipment;
- (d) standard of maintenance and repair to be achieved and maintained; and
- (e) how the costs of the maintenance shall be funded and for the avoidance of doubt this shall include:
- (f) a mechanism to ring fence funds paid to the Management Company pursuant to or received from future owners of the Residential Units for use solely in relation to the management and maintenance of the Green Infrastructure and Open Space (including play equipment);

"Open Space Transfer" means the transfer to the Management Company of the unencumbered freehold interest in the Open Space PROVIDED THAT such transfer shall:

- (a) be unencumbered;
- (b) be free from contamination which would prevent the use of the Open Space as open space;
- (c) be following all necessary archaeological surveys having been completed;

- (d) include such other services and service media as may be agreed between the parties to the transfer;
- (e) not include any terms which would restrict public access save for the purposes of maintenance works or in the case of emergency;
- (f) not include any terms which would directly or indirectly affect the construction, servicing or occupation of the part of the Site that is to be retained by the Owners;
- (g) include any reasonable reservation of rights of access and services over the Open Space for the purpose of laying, managing, maintaining, replacing, renewing, cleaning and repairing services including but not limited to sustainable urban drainage measures, water, gas, sewerage, drainage or electricity (as applicable);
- (h) include for the benefit of the Open Space the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the Open Space over any adjoining land for its intended purposes as set out in Schedule 5;
- (i) be at nil consideration;
- (j) include a covenant that the Open Space shall not be used for any purpose other than for public open space including but not limited to community/public events; and
- (k) include a covenant that the Owners shall bear the reasonable legal and professional costs of the Management Company and any SDLT liability resulting from the transfer;

"Owners" together the First Owner and the Second Owner and their successors in title;

"Parcel" shall mean each area of the Site which includes Affordable Housing Units and is to be defined by a Reserved Matters Application

"Part 2 Certificate" means the part 2 certificate issued from the County Council's director of resource management pursuant to a Section 38 Agreement.

"Part 1 Eligible Self Build Residential Unit Purchaser" means an individual who is pre-registered on Part 1 of the Borough Council's Self Build Register being an individual who meets the local eligibility criteria and has the financial capacity to purchase the Self/Build Residential Plot for its open market value or such other person(s) who intend(s) to commission construction of a Residential Unit on a Self Build Plot as the Owners identify to the Borough Council as part of the written notice referred to in paragraph 4 of Schedule 12 such person(s) to have the financial capacity to purchase the Self/Build Residential Plot for its open market value and meets the local eligibility criteria;

"Part 2 Eligible Self Build Residential Unit Purchaser" means an individual who is pre-registered on Part 2 of the Borough Council's Self Build Register being an individual who does not meet the local eligibility criteria but has the financial capacity to purchase the Self/Build Residential Plot for its open market value or such other person(s) who intends to commission construction of a Residential Unit on a Self Build Plot as the Owners identify to the Borough Council as part of the written notice referred to in paragraph 5 of Schedule 12 such persons to have the financial capacity to purchase the Self/Build Residential Plot for its open market value;

"Parties" means the parties to this Deed and **"Party"** shall be construed accordingly;

"Pedestrian and Cycle Railway Bridge" means the pedestrian and cycle bridge over the Ipswich to Felixstowe Line railway line (East Suffolk Line) in the indicative location as shown on Drawing VD19107-SK101 (Rev A) at Appendix 6;

"Pedestrian and Cycle Railway Bridge Commuted Sum" means the sum to be calculated by the County Council in accordance with the provisions of paragraph **Error! Reference source not found.** of Schedule 4 being the cost of the on-going maintenance of the Pedestrian and Cycle Railway Bridge following adoption by the County Council;

"Pedestrian and Cycle Railway Bridge Escrow Account" means a specific interest bearing and instant access deposit account (that will have its own specific reference code to ensure that it remains separate from any other capital/revenue expenditure that the County Council undertakes) to be held by the County Council and into which the Pedestrian and Cycle Railway Bridge Maintenance Payment shall be deposited (where such sums are secured pursuant to paragraphs 19.4 of Schedule 15) and which:

- (a) in relation to the Pedestrian and Cycle Railway Bridge Maintenance Payment is to be used for the sole purpose of meeting the costs of the ongoing maintenance of the Pedestrian and Cycle Railway Bridge prior to adoption of the same by the County Council;
- (b) shall accrue interest at a rate of (0.02%) below base rate (unless a higher rate can be achieved in which case such higher rate will be applied) and will either be applied to meet the on-going maintenance prior to adoption of the Pedestrian and Cycle Railway Bridge or for the purposes set out in (b) above; and
- (c) may only be closed once all payments, sums and costs have been met and the balance is nil;

"Pedestrian and Cycle Railway Bridge Highway Link" means the pedestrian footpath and cycleway link to be constructed on the Site to connect directly to the Pedestrian and Cycle Railway Bridge and providing a pedestrian footpath and cycleway link to the existing adopted public highway and which shall be dedicated to the County Council as highway maintainable at the public expense;

"Pedestrian and Cycle Railway Bridge Land" means the land forming part of the Site shown indicatively coloured red on the Bridge Plan and labelled "Pedestrian Bridge" which shall (with the Temporary Accommodation Land) be used for the purpose of the construction landing support and accommodation of all structures and maintenance of the Pedestrian and Cycle Railway Bridge including siting of compounds, welfare facilities, vehicular parking and material storage; and the location of the Temporary Accommodation Land may be amended with the agreement of the Owners and the Southern Land Owner (acting reasonably) prior to or during the course of construction of the Development PROVIDED THAT any such amendments shall not be made if they would prejudice or delay the delivery of the Vehicular Railway Bridge and the Pedestrian and Cycle Railway Bridge but FURTHER PROVIDED THAT any amendment(s) to the location of the Temporary Accommodation Land shall not be made if it would give rise to likely significant environmental effects that have not been assessed within the Environmental Statement;

"Pedestrian and Cycle Railway Bridge Maintenance Payment" means the relevant proportion of the estimated annual maintenance costs of maintaining the Pedestrian and Cycle Bridge from completion until adoption by the County Council being the relevant proportion

attributable to the Southern Land Owners on an annual basis PROVIDED THAT the payments shall be the lesser of:

- (a) £1,500 (one thousand five hundred pounds) per annum Indexed; and
- (b) 42.6% (forty two point six per cent) of the annual costs incurred by the Owners in maintaining and insuring the Pedestrian and Cycle Railway Bridge

PROVIDED FURTHER THAT if the Pedestrian and Cycle Railway Bridge is not for any reason dedicated to the County Council as highway maintainable at the public expense pursuant to paragraph 2.8 of Part 1 of Schedule 4 the maintenance costs of the same shall be borne by the Owners and Southern Land Owners and in such instance the cost cap set out at (a) and (b) above shall apply;

"Pedestrian and Cycle Railway Bridge Owners Commuted Sum" means the sum to be agreed between the Owners and the County Council being:

- (a) Where HIF is insufficient to meet the costs of the Pedestrian and Cycle Railway Bridge Commuted Sum in full then such part that is not otherwise provided for by HIF monies shall be calculated and paid proportionately as between the Owners and the Southern Land Owners in accordance with the provisions of paragraph 2.11 of Part 1 of Schedule 4 and Part 2 of Schedule 4 and paragraph 13 of Schedule 14 with the Southern Land Owners' proportion being represented by the Southern Land Overspend Contribution or
- (b) where no planning obligation has been secured from the Southern Land Owners pursuant to paragraph 13.1.4 of Schedule 14 such that no Southern Land Overspend Contribution has been paid, 100% of the Pedestrian and Cycle Railway Bridge Commuted Sum where HIF is insufficient to meet the costs of the Pedestrian and Cycle Railway Bridge Commuted Sum; or
- (c) where a planning obligation has been secured which requires the payment of a lesser sum from the Southern Land Owners than the Southern Land Overspend Contribution and HIF is insufficient to meet the costs of the Pedestrian and Cycle Railway Bridge Commuted Sum in full, the difference between the sum actually secured against the Southern Land Owners as payment and the Pedestrian and Cycle Railway Bridge Commuted Sum.

"Perpetuity" means a minimum term of One Hundred and Twenty Five years from the date of first Occupation of an Affordable Housing Unit;

"Phase or Phases" means a distinct phase (or part of a phase as proposed within a Reserved Matters Application) of the Development shown for indicative purposes on the Site Wide Phasing Strategy unless otherwise agreed in writing between the Borough Council and the Owners;

"Plan" means the plan entitled "Site Location Plan" attached to this Deed at Appendix 1;

"Planning Agreement" means in relation to the Development this Agreement and any other agreement or other instrument binding the Site (or any part of it) by way of an enforceable obligation under Section 106 of the Town & Country Planning Act 1990 Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or the Open Space Act 1906 or under any other enactment or local statute having similar force and the expression 'Planning Agreement' shall also include any Works

Agreement and shall include any variations or modifications to any Planning Agreement or Works Agreement from time to time agreed with any relevant authority;

"Planning Permission" means the planning permission(s), subject to conditions, to be granted pursuant to the Application for the Development;

"Police Services Contribution" means the sum of £10,339 (ten thousand three hundred and thirty nine pounds) Index Linked to be applied towards new police equipment (including but not limited to staff equipment and police vehicles) and the provision of automatic number plate recognition cameras;

"Practical Completion" means a stage in the progress of the relevant work when that work or designated portion thereof is sufficiently complete so that, where necessary, a Certificate of Practical Completion is issued and it can be Occupied or used for its intended use, and **"Practically Complete"** and other cognate terms shall be construed accordingly;

"Primary Education Contribution" means the sum of £4,598,809 (four million, five hundred and ninety eight thousand, eight hundred and nine pounds) Index Linked;

"Primary School" means at least a 1 form entry primary school (210 places) capable of extension to 2 form entry (420 places) and any associated playing fields to be constructed whether or not by the County Council on the Primary School Site which for the avoidance of doubt may be an academy, free school and/or an academy free school and which may be used for community uses pursuant to condition 38 of the Planning Permission;

"Primary School Anticipated Commencement Notice" means a written notice served by the County Council on the Owners setting out the anticipated date the County Council (or any other academy free school or other academic institution which shall be responsible for the construction of the Primary School) intends to commence construction of the Primary School

"Primary School Design Fee" the sum of £50,000 (fifty thousand pounds) Index Linked;

"Primary School Programme" means the indicative programme for the construction of the Primary School as annexed to this Deed at Appendix 3 or such variation to that programme as may be necessary and agreed as between the Owner and the County Council in the event that the County Council serves the Primary School Anticipated Commencement Notice;

"Primary School Site" means the land upon which the Primary School and Early Years Setting is proposed to be constructed as shown indicatively only on drawing number IP-SCH-001 as annexed to this Deed at Appendix 3 conforming to the following:

- (a) a broadly level (max 1:70 slope) site of not less than 2 (two) hectares;
- (b) being undivided with no public footpaths or other rights of way across the site;
- (c) with no restrictions or covenants on the title that would prevent its use for the purpose of providing the Primary School and/or the Early Years Setting, ancillary uses and community use; and
- (d) with access to the primary road through the Development.

"Primary School Site Transfer" means the transfer for the Primary School Site;

"Public Rights of Way Contribution" means the sum of £123,194 (one hundred and twenty three thousand one hundred and ninety four pounds) Index Linked;

"Purposes" means the use to which each of the Contributions payable by the Owners specified in this Deed is to be put;

"P&C Overspend" means the balance of any P&C Shortfall after deduction of any Vehicular Surplus (if any);

"P&C Shortfall" means the extent to which the sum of the Development Costs associated with the design, delivery construction, maintenance and adoption of the Pedestrian and Cycle Railway Bridge as agreed or determined in accordance with paragraph 2 of Part 2 of Schedule 4 exceeds the HIF P&C Allocation;

"P&C Withdrawal Costs" means the sum of the Development Costs actually incurred associated with the design, delivery construction, maintenance and adoption of the Pedestrian and Cycle Railway Bridge (including such invoices tender receipts or otherwise that set out costs incurred) and excluding any HIF P&C Allocation received by the Second Owner which has not been required to be repaid by Homes England and/or the Borough Council such P&C Withdrawal Costs as agreed or determined in accordance with paragraph 3.2 of Part 2 of Schedule 4;

"Reasonable Endeavours" means that it is agreed by the parties that the party under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this Deed the respective party will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances may reasonably be expected of a competent commercial party in the context of the Development (or part of the Development) PROVIDED THAT where a Reasonable Endeavours obligation applies to the Borough Council, the County Council and/or the Council, (together the "Councils") any attempt to fulfil the relevant obligation shall not require the expenditure of sums of money but may include the application of any funding if received (and specifically applicable to the Development) and the engagement of such professional or other advisers as in all the circumstances may reasonably be expected of a competent publicly funded body and in the context of all its/their statutory duties and functions and PROVIDED FURTHER THAT any attempt to fulfil a relevant obligation shall not require the Councils to breach and/or exceed any of their statutory functions, duties and powers or any requirements of any regulatory body in respect of their statutory, regulatory, compliance functions and/or capacities;

"Relevant Balance" means in relation to:

- (a) the Viability Assessment submitted (if required) pursuant to paragraph 1.1 of Part 2 of Schedule 2: 1,100 Residential Units; and
- (b) Viability Assessment 1 submitted pursuant to paragraph 1.2 of Part 2 of Schedule 2: 700 Residential Units; and
- (c) Viability Assessment 2 submitted pursuant to paragraph 1.6 of Part 2 of Schedule 2: 450 Residential Units;

"Relevant BC Contribution Date" means (excluding the Community Building Contribution) 10 years after the date of payment of a Borough Council Contribution to the

Borough Council or if paid in instalments 10 (ten) years from the date each relevant instalment was paid to the Borough Council;

"Relevant CC Contribution Date" means either 10 (ten) or 15 (fifteen) years after the date of payment of a County Council Contribution to the County Council as set out in the table below or if paid in instalments 10 (ten) or 15 (fifteen) years from the date each relevant instalment was paid to the County Council:

Education	Contribution	Relevant Date (years from payment)
	Primary School Design Fee	10
	Primary Education Contribution	10
	Secondary School Design Fee	10
	Secondary Education Contribution	15
	Sixth Form Education Contribution	15
	Early Years Contribution	10
Transport	Bus Service Contribution	10
	Bus Stop Improvements Contribution	10
	Off Site Sustainable Transport Contribution	10
	Public Rights of Way Contribution	10
	Traffic Management Contribution	10
	Travel Plan Evaluation and Support Contribution	10
	Westerfield Station Improvements Contribution	10
Library	Library Contribution	10
Waste	Deferred Waste Facilities Contribution	10

"Relevant Community Building Contribution Date" means 15 (fifteen) years after the date of payment of the Community Building Contribution;

"Relevant Underspend Date" means 5 (five) years after the date:

- (a) the Borough Council first becomes aware of a BC Contribution Underspend; or

- (b) the County Council has transferred to the Borough Council any monies representing a SCC Contribution Underspend;

"Remediation Strategy" means a written strategy prepared by a suitably qualified person(s) of at least 10 (ten) years' experience and a member of the Institute of Civil Engineering which shall set out (a) details concerning remediation, rectification and/or repair of the Country Park SuDS by virtue of any pollution and/or damage and/or design defects identified in a SuDS Survey (b) which shall include identification of timeframes for the implementation of such remediation works should they be identified as necessary (c) the proposed budget for the costs of undertaking such remediation works which will be used to set the SuDS Remediation Costs for the relevant Country Park SuDS to which the Remediation Strategy relates and (d) whether the SuDS Remediation Costs shall be secured by way of SuDS Bond, Guarantee or SuDS Escrow Account;

"Reserved Matters Application" means an application submitted to the Borough Council (and where applicable the Council) for approval of reserved matters in accordance with the Planning Permission and **"Reserved Matters"** and **"Reserved Matters Approval"** shall be construed accordingly;

"Resident Travel Pack" means a travel pack provided to each Residential Unit that includes information on how to redeem from the Travel Plan Coordinator two travel vouchers up to the total value of £50 (fifty pounds) per Residential Unit (or a rail or cycle voucher of equivalent value per Residential Unit), current public transport information for bus and rail services, provision of maps of pedestrian and cycle routes, car sharing information, personalised travel plans and information to promote the benefits of sustainable travel in the local area to encourage sustainable travel;

"Residential Unit" means any dwelling constructed on the Site pursuant to the Planning Permission and the term "Unit" shall be construed accordingly;

"Residual Contribution Sum" means individually or collectively the amount of monies available to the Borough Council by virtue of a BC and/or SCC Contribution Underspend;

"Revenues" means the total of all of the revenues secured by the Owners from the Development the types of which are shown in the Viability Review Template and which include actual sales/letting capital values for all Residential Units for which a disposal has been made, or where it has not, an estimate of such values as is made by the Owners based on previous disposals;

"RPI Indexation" means indexation by reference to the All Items Index of Retail Prices issued by the Office for National Statistics or any successor to that index from time to time or (if there is no successor) such other appropriate index agreed between the Parties;

"SCC Contribution Underspend" means where the Purpose of a County Council Contribution(s) has/have either (a) been achieved at a cost lower than the Contribution paid, or (b) the obligation to achieve the Purpose no longer applies in accordance with any relevant provisions of this Deed;

"Secondary Education Contribution" means the sum of £3,719,255 (three million seven hundred and nineteen thousand two hundred and fifty five pounds) Index Linked toward the costs of providing secondary education facilities for the Development;

"Secondary School Design Fee" means the sum of £50,000 (fifty thousand pounds) Index Linked towards the costs of designing secondary education facilities for the Development;

"Secondary School" means a new school providing secondary education facilities serving the Development to be located within the Ipswich Garden Suburb or provision of secondary school places in accordance paragraph 16 of Schedule 15;

"Section 38 Agreement" means an agreement entered into with the County Council and any other relevant party pursuant to section 38 of the 1980 Act and all other relevant powers;

"Self Build Plot" means a relevant part of the Self Build Site to enable construction of those Residential Units to be provided as Self Build Residential Units and which are included on the Borough Council's Self Build Register (or otherwise disposed of in accordance with the provisions of Schedule 12 of this Deed) and for the avoidance of doubt reference to Self Build Plot shall refer to one individual plot on the Self Build Site required for the construction of one Self Build Residential Unit;

"Self Build Register" means the register of people who are interested in self build projects which is kept and maintained by the Borough Council in accordance with its duties under the Self Build and Custom Housebuilding Act 2015 (as amended);

"Self Build Residential Unit" means a Residential Unit or group of Residential Units which meets the definition in the Self-Build and Custom Housing Act 2015 (as amended) and the CIL Regulations which is/are commissioned by an individual or group of individuals from the Owners or self-built by the individual or group of individuals acquiring a Self Build Plot;

"Self Build Site" means the land upon which the Self Build Residential Units are proposed to be constructed and including/conforming to the following:

- (a) Fully Serviced;
- (b) a level site of not less than 0.75 hectares or suitable for the provision of not less than 25 Self-Build Residential Units; and
- (c) being undivided with no public footpaths or other rights of way dissecting the site;

"Shared Equity" means an Intermediate Affordable Housing product that has a minimum 20% discount to open market value;

"Shared Ownership Unit" means any Affordable Housing Unit occupied partly for rent and partly by way of owner occupation on shared ownership arrangements as defined in section 70(4) of the Housing and Regeneration Act 2008 where the lessee for the time being has the right to acquire 100% of the equity from the Affordable Housing Provider over time;

"Site" means the land known as Henley Gate, Henley Road, Ipswich, Suffolk as shown edged red on the Plan at Appendix 1;

"Site Wide Phasing Strategy" means the phasing strategy relating to each phase of the Development and approved pursuant to condition 9 of the Planning Permission;

"Sixth Form Education Contribution" means the sum of £875,908.00 (eight hundred and seventy five thousand nine hundred and eight pounds) Index Linked;

"Skylarks Agreement" means the section 106 agreement to be entered into by the Borough Council, the County Council and the First Owner on land known as Sparrows Nest Farm as shown cross-hatched red on the plan at Appendix 1 titled Skylark Mitigation Red Line

Boundary (drawing number IP-GEN-001) in respect of the provision of skylark plots pursuant to the site wide ecology strategy as approved by the Borough Council in accordance with Condition 14 of the Planning Permission;

"**Smarter Choices Area**" means the area shaded in orange on the as shown on the Smarter Choices Plan at Appendix 4;

"**Smarter Choices Measures**" means the provision of personalised travel planning in accordance with the Travel Plans for all residents within the Smarter Choices Area through a team of travel advisors undertaking home visits to discuss residents everyday travel habits, providing travel information such as maps and bus timetables, discussing the alternative options to use of the car and the associated benefits in terms of health, costs etc;

"**Smarter Choices Plan**" means the plan titled Ipswich Garden Suburb Personalised Travel Planning Area Figure 8 at Appendix 4;

"**Smarter Choices Report**" means the report submitted by the Owners to the County Council including evidence of delivery of the Smarter Choices Measures, the outcome of the Smarter Choices Measures and the modal shift achieved by the Smarter Choices Measures;

"**Social Homebuy**" means a scheme that allows Affordable Housing Providers to sell rented social housing homes to the tenants of those homes;

"**Southern Land**" means the land shown edged blue on Drawing IP-GEN 008 at Appendix 1 (or any part of it) and which is included in a Southern Land Application;

"**Southern Land Application(s)**" means any of the following:

- (a) the planning application under the Borough Council's application reference: 14/00638/OUTFL for the development of the Southern Land; or
- (b) any planning application for development that may be submitted within a period of 15 (fifteen) years from the date of this Deed in relation to the Southern Land;

"**Southern Land Obligation(s)**" means any planning obligation entered into in connection with a Southern Land Application; in accordance with section 106 of the 1990 Act; in compliance with regulation 122 of the CIL Regulations; and made between the Southern Land Owners and the Borough Council and/or the County Council;

"**Southern Land Overspend Contribution**" means 42.6% (forty two point six per cent) of the P&C Overspend up to a maximum of the sum of £275,124 (two hundred and seventy five thousand, one hundred and twenty four pounds) Indexed from the date that the P&C Shortfall and Vehicular Surplus are both agreed or determined pursuant to paragraph 2 of Part 2 of Schedule 4 until the date of receipt by the Borough Council from the Southern Land Owners;

"**Southern Land Owner(s)**" means the owner(s) and/or developers of the Southern Land as at the date any obligations in this Deed (and relating to the Southern Land) are capable of being enforced;

"**Southern Land Pedestrian and Cycle Railway Bridge Land**" means the land shown indicatively coloured red on the Bridge Plan on the Southern Land and labelled "Pedestrian Bridge" which shall (with the Temporary Accommodation Land) be used for the purpose of the construction landing support and accommodation of all structures and maintenance of the Pedestrian and Cycle Railway Bridge including siting of compounds, welfare facilities,

vehicular parking and material storage; and the location of the Southern Land Temporary Accommodation Land may be amended with the agreement of the Owners and the Southern Land Owner (acting reasonably) prior to or during the course of construction of development on the Southern Land according to a Southern Land Application PROVIDED THAT any such amendments shall not be made if they would prejudice or delay the delivery of the Vehicular Railway Bridge and the Pedestrian and Cycle Railway Bridge but FURTHER PROVIDED THAT any amendment(s) to the location of the Southern Land Temporary Accommodation Land shall not be made if it would give rise to likely significant environmental effects that have not been assessed within the Environmental Statement;

"Southern Land Planning Permission" means any planning permission granted pursuant to a Southern Land Application;

"Southern Land P&C Repayment Contribution" means the combined total of :

- (a) 42.6% of the HIF P&C Allocation required to be repaid to Homes England pursuant to the Grant Funding Agreement subject to a cap of £558,087 (five hundred and fifty eight thousand and eighty seven pounds); and
- (b) 42.6% of the costs and interest levied as referred to in sub-clauses (b) and (c) in the definition of HIF Repayment;

And where development pursuant to a Southern Land Application has not begun for the purposes of section 56 of the 1990 Act at the date that the Southern Land P&C Repayment Contribution falls due to be paid pursuant to the Grant Determination Agreement and the Second Owner makes payment of the whole of the HIF Repayment to the Borough Council pursuant to the Back to Back Agreement to enable the Borough Council to repay Homes England pursuant to the Grant Funding Agreement then the Southern Land P&C Repayment Contribution shall be deemed to be Index Linked from the date that the Southern Land P&C Repayment Contribution falls due to be paid pursuant to the Grant Determination Agreement and the date of receipt by the Borough Council from the Southern Land Owners of the Southern Land P&C Repayment Contribution

"Southern Land Repayment Contribution" means the amount of HIF (or any part of it) required by Homes England to be paid for any reason pursuant to paragraphs 7.4 and/or 8 of Schedule 2 of the GDA and payable by the Southern Land Owner based on the combined total of the following calculation:

- (a) the Country Park HIF Repayment Contribution; and
- (b) the Southern Land P&C Repayment Contribution

it being acknowledged that Homes England may seek repayment of a lump sum of the HIF rather than being specifically proportioned or identified as being related to the CP HIF Allocation or the HIF P&C Allocation or HIF Vehicular Allocation in which case such lump sum shall be proportioned for the purposes of identifying the quantum attributable to each of the three HIF Funded Infrastructure Works based on 13.3% of any repayment being attributed as being the HIF P&C Allocation, 43.9% of any repayment being attributed as being the HIF Vehicular Allocation and 42.8% of any repayment being attributed as being the CP HIF Allocation

And where development pursuant to a Southern Land Application has not begun for the purposes of section 56 of the 1990 Act at the date that the Southern Land Repayment Contribution falls due to be paid pursuant to the Grant Determination Agreement and the

Second Owner makes payment of the whole of the HIF Repayment to the Borough Council pursuant to the Back to Back Agreement to enable the Borough Council to repay Homes England pursuant to the Grant Funding Agreement then the Southern Land Repayment Contribution shall be deemed to be Index Linked from the date that the Southern Land Repayment Contribution falls due to be paid pursuant to the Grant Determination Agreement and the date of receipt by the Borough Council from the Southern Land Owners of the Southern Land Repayment Contribution;

"Southern Land Temporary Accommodation Land" means any land forming part of the Southern Land reasonably and properly temporarily required for the purposes of carrying out the works to construct land and maintain the Vehicular Railway Bridge and the Pedestrian and Cycle Railway Bridge in the approximate locations shown indicatively hatched blue on the Bridge Plan; and the location of the Southern Land Temporary Accommodation Land may be amended with the agreement of the Owners and the Southern Land Owner (acting reasonably) prior to or during the course of construction of development on the Southern Land according to a Southern Land Application; and the location of the Southern Land Temporary Accommodation Land may be amended with the agreement of the Owners and the Southern Land Owner (acting reasonably) prior to or during the course of construction of the Development PROVIDED THAT any such amendments shall not be made if they would prejudice or delay the delivery of the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge but FURTHER PROVIDED THAT any amendment(s) to the location of the Southern Land Temporary Accommodation Land shall not be made if it would give rise to likely significant environmental effects that have not been assessed within the Environmental Statement;

"Southern Land Valley Road/Westerfield Road Roundabout Improvements Contribution(s)" means the sum or sums to be paid to the Borough Council by the Southern Land Owners under any Southern Land Obligation which shall in aggregate amount to £1,113,188 (one million one hundred and thirteen thousand one hundred and eighteen pounds) Index Linked towards the associated costs of the Valley Road/Westerfield Road Roundabout Improvements (or in relation to any balance not used in delivering those improvements, to be applied to off-site Affordable Housing);

"Southern Land Vehicular Railway Bridge Land" means the land shown indicatively coloured red on the Bridge Plan on the Southern Land and labelled "Road Bridge" which shall (with the Southern Land Temporary Accommodation Land) be used for the purpose of the construction landing support and accommodation of all structures and maintenance of the Vehicular Railway Bridge and permanent vehicular access to the Vehicular Railway Bridge including siting of compounds, welfare facilities, vehicular parking and material storage and the location of the Southern Land Temporary Accommodation Land may be amended with the agreement of the Owners and the Southern Land Owner (acting reasonably) prior to or during the course of construction of development on the Southern Land according to a Southern Land Application PROVIDED THAT any such amendments shall not be made if they would prejudice or delay the delivery of the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge but FURTHER PROVIDED THAT any amendment(s) to the location of the Southern Land Temporary Accommodation Land shall not be made if it would give rise to likely significant environmental effects that have not been assessed within the Environmental Statement;

"Southern Land Withdrawal Payment" means 42.6% (forty two point six per cent) of the P&C Withdrawal Costs (capped at £833,211 (eight hundred and thirty three thousand, two hundred and eleven pounds net indexation) which shall be Index Linked from the date the Final Withdrawal Account is submitted to the Borough Council until the date of receipt by the

Borough Council of the Southern Land Withdrawal Payment from the Southern Land Owners;

"Specific Contribution Account" means a specific internal Borough Council or County Council account into which the Borough Council or the County Council will pay a single Contribution which shall attract interest at the Bank of England's base rate;

"Staircasing" means the purchase by the owners of additional equity in a Shared Ownership Unit or Shared Equity unit;

"Substantially Commenced" means the occurrence of all of the following events:-

- (a) an Unconditional Obligation Certificate is provided to the Borough Council and County Council in writing (which for the avoidance of doubt can be in the form of a letter); and
- (b) piling works (or similar works approved by the County Council) for the construction of the Pedestrian and Cycle Railway Bridge landing point have commenced on the Site;

"SuDS" means a sustainable urban drainage system and all associated works serving the Development;

"SuDS Bond" means a bond of surety in favour of the Borough Council for the SuDS Remediation Costs in the event the Owners fail to undertake any works set out in any approved Remediation Strategy from a surety or banking institution first approved by the Borough Council and in such form as the Borough Council shall reasonably require;

"SuDS Catchment Areas 1, 2 and 3" shall mean those surface water drainage areas for each development phase shown for indicative purposes only in orange, green and purple on the SuDS Catchment Area Plan at Appendix 1 and which may be varied from time to time if first agreed in writing by the Borough Council;

"SuDS Escrow Account" means a specific interest-bearing instant access deposit account held by the Borough Council into which the SuDS Remediation Costs shall be deposited by the Owners and which:

- (a) is to be used for the sole purpose of meeting the SuDS Remediation Costs which may allow withdrawal by the Borough Council in accordance with the paragraph 19.3 of Part 1 of Schedule 6;
- (b) Shall accrue interest that will either be applied to meet the SuDS Remediation Costs or shall be returned to the Owners in the following circumstances:
 - (i) In relation to any monies deposited pursuant to paragraph 17 of Part 1 of Schedule 6: monies relevant to the SuDS Catchment Area shall be returned to the Owners together with any interest accrued thereon where a SuDS Survey has been undertaken for the relevant SuDS Catchment Area and no remediation works are required to that SuDS Catchment Area; and
 - (ii) In relation to any monies deposited pursuant to paragraph 17 of Part 1 of Schedule 6: any monies remaining in relation to relevant to the SuDS Catchment Area shall be returned to the Owners together with any interest accrued thereon where a form of security is put in place pursuant to

paragraph 19.1.6 of Part 1 of Schedule 6 where a SuDS Survey has been undertaken for the relevant SuDS Catchment Area and a Remediation Strategy is required to be implemented for that SuDS Catchment Area; and

- (iii) In relation to any monies deposited pursuant to paragraph 19.1.6 of Part 1 of Schedule 6: any monies remaining in relation to relevant to the SuDS Catchment Area shall be returned to the Owners together with any interest accrued thereon after a Verification Report has been approved in writing by the Borough Council in accordance with paragraph 19.1.5 of Part 1 of Schedule 6 where a SuDS Survey has been undertaken for the relevant SuDS Catchment Area and remediation works are required to that SuDS Catchment Area
- (c) which may only be closed once all SuDS Remediation Costs have been met and the balance is nil;

"SuDS Land" means that part of the Site on which the SuDS shall be situated;

"SuDS Maintenance and Management Scheme" means a written scheme as submitted and approved for the on-going management and maintenance of the SuDS (to be approved as part of the details submitted pursuant to conditions 12 and 19 of the Planning Permission) and which shall include the following:

- (a) frequency of maintenance;
- (b) standard of maintenance and repair to be achieved and maintained; and
- (c) save for the Country Park SuDS, how the costs of the maintenance shall be funded.

"SuDS Remediation Costs" means the estimated costs of implementation of the relevant approved Remediation Strategy for the relevant Country Park SuDS that were the subject of the approved Remediation Strategy (such costs as being set out in the approved Remediation Strategy);

"SuDS Survey" means a survey carried out (no earlier than 3 (three) months from the date of its submission) by a suitably qualified engineer of at least 10 (ten) years' experience and a member of the Institute of Civil Engineering to identify if any Country Park SuDS have been contaminated and/or structurally undermined by construction and/or occupational activities associated with the Development which survey shall identify (a) if there has been any discharge of contaminants/silt from construction activities carried out as part of the Development and/or occupation of the relevant Catchment Phases that drain into the SuDS that impede the functioning of the SuDS and (b) if there have been any design defects in the SuDS as identified that mean the functionality of the SuDS is impaired where such defects have become evident when the SuDS are connected into the development within the relevant Catchment Phase PROVIDED ALWAYS THAT the Council shall be responsible for (a) damage arising from use of any part of the Country Park and Country Park SuDS already transferred and caused by the general public and (b) all maintenance of any part of the Country Park already transferred to the Borough Council and required to ensure the SuDS continue to function as designed and vegetation does not restrict the flow of water as set out in the SuDS Maintenance and Management Scheme;

"SuDS Transfer" means the transfer to the Management Company, the Borough Council or statutory drainage authority of the unencumbered freehold interest in the SuDS PROVIDED THAT such transfer shall provide that the SuDS Land shall:

- (a) be free from contamination which would prevent the use of the SuDS for water attenuation and surface water drainage purposes associated with the Development;
- (b) be following all necessary archaeological surveys having been completed;
- (c) be free of any services and/or services media other than SuDS (unless otherwise agreed between the parties and save where such services and/or services media located in under or over the SuDS Land have been approved pursuant to any planning condition then it shall be deemed agreement between the parties has been given for such services and/or service media);
- (d) not include any terms which would directly or indirectly affect the construction, servicing or occupation of the part of the Site that is to be retained by the Owners;
- (e) include for the benefit of the SuDS the grant of any rights of access and services which are reasonably required for the use, management and maintenance of the SuDS over any adjoining land for its intended purposes as set out in Schedule 7;
- (f) be for a consideration of no more than £1 (one pound); and
- (g) include a covenant that the SuDS shall not be used for any purpose other than for water attenuation and surface water drainage purposes associated with the Development;

"Surplus" means (save for the Early Viability Surplus) the sum agreed or determined as part of a Viability Review of Viability Assessment 1 and/or Viability Assessment 2 carried out in accordance with the Viability Review Template and the relevant provisions of Schedule 2 Part 2;

"Swimming Facilities" means new and existing swimming facilities in the Borough;

"Temporary Accommodation Land" means any land forming part of the Site reasonably and properly temporarily required for the purposes of carrying out the works to construct, land and maintain the Pedestrian and Cycle Railway Bridge in the approximate locations shown indicatively hatched blue on the Bridge Plan; and the location of the Temporary Accommodation Land may be amended with the agreement of the Owners and the Southern Land Owner (acting reasonably) prior to or during the course of construction of the Development PROVIDED THAT any such amendments shall not be made if they would prejudice or delay the delivery of the Vehicular Railway Bridge and/or the Pedestrian and Cycle Railway Bridge but FURTHER PROVIDED THAT any amendment(s) to the location of the Temporary Accommodation Land shall not be made if it would give rise to likely significant environmental effects that have not been assessed within the Environmental Statement;

"Temporary Diversion Framework" means the temporary diversion framework attached to this agreement at Appendix 13 which identifies the principles of the strategy for the temporary diversion of FP18;

"Temporary Diversion Route" means the temporary diversion route shown indicatively on the Temporary Diversion Strategy Drawing or in relation to the Southern Land the Alternative Diversion Route;

"Temporary Diversion Strategy Drawing" means drawing number VD19107-SK100 Rev B;

"Traffic Management Contribution" means the sum of £110,031 (one hundred and ten thousand and thirty one pounds) Index Linked;

"Traffic Management Scheme" means the scheme attached to this Deed at Appendix 7 entitled "Henley Gate - Traffic Management Scheme";

"Transport Assessment" means the Transport Assessment prepared by Vectos relating to Henley Gate, Ipswich Garden Suburb dated June 2016;

"Travel Plan Coordinator" means the person or company appointed by the Owners to fully implement and monitor the Travel Plans;

"Travel Plans" means together the Interim Travel Plan and the Full Travel Plan;

"Travel Plans Evaluation and Support Contribution" means the sum of £12,000 (twelve thousand pounds) Index Linked to be paid in instalments pursuant to paragraph 11 of Schedule 4 to this Deed;

"Travel Plans Implementation Bond" means the bond in a form agreed with the County Council and to be entered into by the Owners with a surety approved in writing by the County Council in favour of the County Council in the sum of £46,825 (forty six thousand eight hundred and twenty five pounds) Index Linked such sum being considered by the County Council as the sum required that should the Owners default in complying with the obligations set out in this Deed in respect of the Resident Travel Pack and the Travel Plans as set out in paragraphs 13 to 15 of Schedule 4 the County Council shall call upon the surety to provide such amount of the bond (including the whole) as is required to secure the implementation, carrying out and delivery of the Resident Travel Pack and Travel Plans either itself or through an agent appointed or instructed by the County Council;

"Travel Plans Implementation Bond Expiry Date" means one year after the first Occupation of the final Residential Unit;

"Travel Plan Monitoring Report" means the annual report that is submitted to the County Council by the Travel Plan Coordinator in a form acceptable to the County Council that provides a summary of the traffic counts and resident surveys to demonstrate that the Full Travel Plan objectives and targets are being achieved;

"Travel Plan Notice" means a notice in writing served on the Owners specifying the steps required of the Owners by the County Council in order to implement the framework and full measures and monitoring requirements of the Travel Plans and/or the obligations in this Deed relating to the Travel Plans, Resident Travel Packs and/or the Smarter Choices Measures;

"Travel Plan Remedial Measures Notice" means a notice in writing served on the Owners by the County Council where the Owners have failed to comply with the requirements of a Travel Plan Notice in respect of the Travel Plans and/or Resident Travel Packs specifying the steps required of the Owners by the County Council in order to comply with those requirements;

"Unconditional Obligation Certificate" means a certificate provided by solicitors acting for the Owners to the effect that:-

- (a) the Owners have completed the Construction Contract in which a construction contractor agrees to construct the Pedestrian and Cycle Railway Bridge by a specified completion date in accordance with an agreed programme subject to the usual extensions; and
- (b) all contractual conditions precedent to the enforcement of the obligation to construct the Pedestrian Cycle Railway Bridge referred to at (a) above have been satisfied;

"Utilities" means mains services including gas, electricity, potable water, data cables and telecommunications;

"Utilities Provider" means an energy service company, statutory undertaker, services utility company or provider if and to the extent that it shall acquire an interest in the Site for the purpose of providing the supply of electricity, gas, water, heat, power, drainage, telecommunications services or public transport services to or for the benefit of the Development;

"Validation Date" means receipt of a valid Viability Assessment pursuant to paragraph 3.3 and 3.4 of Part 2 of Schedule 2;

"Valley Road/Westerfield Road Roundabout Improvements" means the design and construction of roundabout improvements at the Westerfield Road junction with Valley Road generally as shown on WSP Drawing no. 4228-SK-10 Revision A at Appendix 6;

"Valley Road/Westerfield Road Roundabout Improvements Contribution" means the sum of £1,113,188 (one million one hundred and thirteen thousand one hundred and eighty eight pounds) Index Linked toward the associated costs of the Valley Road/Westerfield Road Roundabout Improvements (or in relation to any balance not used in delivering those improvements, to be applied to off-site Affordable Housing;

"Vehicular Railway Bridge" means the vehicular railway bridge to be provided over the Ipswich to Felixstowe Line railway (East Suffolk Line) the indicative location of which is shown on Drawing VD19107-SK101 Rev A at Appendix 6;

"Vehicular Railway Bridge Commuted Sum" means the sum to be paid to the County Council pursuant to paragraph 1.6 of Part 1 of Schedule 4 being the cost of the on-going maintenance of the Vehicular Railway Bridge and (if required to be adopted by the County Council) the Vehicular Railway Bridge Highway Link following adoption by the County Council;

"Vehicular Railway Bridge Highway Link" means the road footway, cycleway or bridleway as appropriate to be constructed on the Site to connect directly to the Vehicular Railway Bridge and provide a link to the existing adopted public highway and which shall be dedicated to the County Council as highway maintainable at the public expense

"Vehicular Railway Bridge Land" means the land as part of the Site shown indicatively coloured red on the Bridge Plan and labelled "Road Bridge" which shall be used for the purpose of the construction landing support and accommodation of all structures and maintenance of the Vehicular Railway Bridge and permanent vehicular access to the

Vehicular Railway Bridge including siting of compounds, welfare facilities, vehicular parking and material storage;

"**Vehicular Surplus**" means the extent to which the HIF Vehicular Allocation exceeds the sum of the Development Costs of the Vehicular Railway Bridge actually incurred as agreed or determined pursuant to paragraph 2 of Part 2 of Schedule 4;

"**Verification Report**" means a written report prepared by a suitably qualified engineer of at least 10 years' experience and a member of the Institute of Civil Engineers verifying that any Remediation Strategy has been implemented as approved

"**Viability Appraisal Inputs**" means the schedule of variable inputs and sources of information agreed by the Borough Council and the Owners and attached to this Deed at Appendix 11;

"**Viability Assessment**" means an open book assessment prepared by or on behalf of the Owners in connection with the Relevant Balance of the Development which (save for any Early Viability Assessment) has been prepared in accordance with the Viability Review Template and the Parties agree that Viability Assessment 1 and Viability Assessment 2 (but not any Early Viability Assessment) shall only be forward looking and will not seek to clawback under provision of Affordable Housing Units (either by way of Deferred Affordable Housing Contribution or through a Deferred Affordable Housing Scheme(s)) in earlier Phases that occurred before the date of any Viability Review;

"**Viability Assessment 1**" means the Viability Assessment which shall only consider the viability of the Relevant Balance of the Development;

"**Viability Assessment 2**" means the Viability Assessment which shall only consider the viability of the Relevant Balance of the Development

"**Viability Review**" means any review of a Viability Assessment by the Borough Council's Assessor in accordance with Part 2 of Schedule 2 to this Deed with the purpose of determining the viability of the Relevant Balance of the Development (as applicable to the respective Viability Assessment) in order to calculate whether any Surplus, or Early Viability Surplus exists and is to be applied to Deferred Affordable Housing Units and/or Deferred Contributions and the amount of such provision or payment;

"**Viability Review Template**" means the template form for the Viability Review of Viability Assessment 1 and Viability Assessment 2 and attached to this Deed at Appendix 11;

"**Viability Review Explanatory User Guide**" as attached to this Deed at Appendix 12;

"**Visitor Centre**" means a multi use building of a minimum of 355 (three hundred and fifty five) square metres but subject to a maximum of 360 (three hundred and sixty) square metres both measured as GEA (Gross External Area) (excluding any associated yard space) located within the Country Park providing information about the Country Park and services and welfare facilities (e.g. toilets and first aid point) for members of the public visiting the Country Park. It shall also be used as an indoor area for training the employees managing the Country Park and an indoor area for educational and activity groups associated with the Country Park. It shall also include provision for a café, meeting rooms, secure equipment compound, car and cycle parking. It shall also incorporate the Community Space;

"**Waste Facilities**" means the existing household waste and recycling centres at Foxhall Road and Portman's Walk;

"**Westerfield Station Improvements Contribution**" means the sum of £100,560 (one hundred thousand five hundred and sixty pounds) Index Linked;

"**Working Day**" means any day other than a Saturday, Sunday, statutory bank holiday and 24 December to 31 December (inclusive) in any year;

"**Works Agreement**" means any agreement relating to the provision, installation, maintenance and (where appropriate) adoption of infrastructure works made pursuant to:

- (a) Section 38 or Section 278 of the Highways Act 1980 or similar agreement for the construction maintenance and adoption of any footways footpaths verges visibility splays junctions roundabouts bridges bus lay-bys cycle ways accommodation works traffic management schemes street lighting and street furniture and ancillary landscaping and the connection of the same to the public highway or any other works to the public highway;
- (b) Section 98 or Section 104 of the Water Industry Act 1991 or similar agreement relating to the provision and adoption of any sewers drains pipes manholes culverts channels watercourses soakaways outfalls and other conduits and apparatus systems necessary for drainage ("Drainage System") or for the diversion of existing Drainage Systems;
- (c) any agreement with a relevant authority for the diversion or undergrounding of existing or the installation of any new service media required for the provision and supply of water gas electricity telephone telecommunications cable television closed circuit television (if appropriate) and all other appropriate services;

and/or any other similar agreement or deed of grant required for the carrying out provision maintenance cleansing and (where appropriate) adoption of works by a relevant authority and shall include any variations or modifications to any Works Agreement from time to time agreed with any relevant authority.

2. INTERPRETATION

- 2.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.2 Unless the context requires otherwise reference in this Deed to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs, appendices and schedules are references to those contained in this Deed and references to plans and drawings are references to plans and drawings annexed to this Deed.
- 2.3 The word "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
- 2.4 References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same.
- 2.5 In this Deed the expressions Borough Council, Council, County Council and Owners shall include their respective statutory successors in respect of the functions to which this Deed relates or successors in title to the Site or any party deriving title through or under that party as the case may be.

- 2.6 Any covenant by the Owners not to do an act or thing shall be deemed to include an obligation to use Reasonable Endeavours not to permit or suffer such act or thing to be done by another person.
- 2.7 The Interpretation Act 1978 shall apply to this Deed.
- 2.8 In the event of any conflict between the provisions of this Deed and any document attached hereto the provisions of this Deed will prevail.
- 2.9 Where in this Deed the Borough Council and/or the Council and/or the County Council is required to give any approval, consent, agreement or otherwise then such approval, consent, agreement or otherwise by the Borough Council and/or the Council and/or County Council shall be given in writing and unless otherwise specified in this Deed shall not be deemed to have been given unless in writing.
- 2.10 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.11 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed as interchangeable in that manner.
- 2.12 Wherever 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.

3. LEGAL EFFECT

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act; section 111 of the 1972 Act; section 33 of the 1982 Act; section 1 of the 2011 Act; section 278 of the 1980 Act; and section 38 of the 1980 Act (in respect of the obligations contained in paragraphs 1.6 and 2.7 of Part 1 Schedule 4); and all other enabling powers, and the obligations contained in clause 9 and Schedules 1 - 16 to this Deed constitute planning obligations for the purposes of the 1990 Act, binding the Owners' interests in the Site, shall be enforceable against the Owners and their successors in title and those deriving title from them in respect of the Site by the Borough Council and/or the Council and/or the County Council as local planning authorities under the 1990 Act **PROVIDED THAT** (save for the restrictions on Occupation in Schedule 2 and any obligations, restrictions made by or imposed on the Owners):
- 3.1.1 save for the Second Owner and its covenants contained in Clauses 7.2 and 7.6 of this Deed for which liability will continue to subsist until they are satisfied in full neither the Owners nor their successors in title shall have any further liability under this Deed in respect of any part of the Site in which they no longer have an interest but without prejudice to any rights of the Borough Council and/or the Council and/or the County Council in respect of any antecedent breach in respect of the Site or such part thereof disposed;
- 3.1.2 neither the First Owner nor the Second Owner is liable to perform the Owners' obligations in this Deed save to the extent that such obligations relate to the parts of the Site in which they respectively hold an interest excluding any obligations relating to the payment of Contributions which **FOR THE AVOIDANCE OF DOUBT** payment of Contributions shall be enforceable jointly and severally against the Owners save to the extent that clause 3.1.1 applies and they have

- parted with their interest in the Site and there has been no antecedent breach(es) in respect of the Site or such part therefore disposed;
- 3.1.3 this Deed shall not be binding on an Affordable Housing Provider or its successors in title or mortgagee except as provided for in Schedule 2;
- 3.1.4 this Deed shall not be binding on the individual owners, occupiers or lessees of any Residential Unit or any mortgagee of such a person or any successor in title to any such person or mortgagee except as provided for in Schedule 2;
- 3.1.5 this Deed shall not be binding on the owners, occupiers or lessees of any Commercial Unit or any mortgagee of such a person or any successor in title to any such person or mortgagee or any mortgagee of such a person or any successor in title to any such person or mortgagee; and
- 3.1.6 this Deed shall not be binding on any Utilities Provider.
- 3.2 So far as the obligations, covenants and undertakings in this Deed are given by the Borough Council, the Council or the County Council they are entered into under the relevant powers referred to in clause 3.1 and those obligations, covenants and undertakings are enforceable against the Borough Council the Council or the County Council (as applicable).

4. CONDITIONALITY

- 4.1 The covenants and obligations contained in this Deed are conditional upon both the:
- 4.1.1 grant of the Planning Permission; and
- 4.1.2 Commencement of Development

Save for the provisions of clauses 11, 13, 14, 17, 19, 24, 26, 28 29 and 30 and any other relevant provisions which shall come into effect immediately upon completion of this Deed and which FOR THE AVOIDANCE OF DOUBT shall include all relevant provisions and obligations which require satisfaction by the Owners prior to Commencement of Development.

5. PROVISIONS FOR RELEASE

- 5.1 It is agreed that this Deed shall determine at such time as the Planning Permission expires or is quashed, cancelled or revoked save insofar as it has already been complied with and without prejudice to any liability which may have arisen pursuant to this Deed beforehand.
- 5.2 Where this Deed determines pursuant to clause 5.1 above or upon the Owners satisfying all of their obligations under this Deed the Borough Council, the Council and the County Council each covenants with the Owners that they will:-
- 5.2.1 remove all entries made in the Register of Local Land Charges in respect of this Deed within 20 Working Days of it ceasing to have effect;
- 5.2.2 subject to clause 5.1 repay any unspent Contributions as set out in paragraph 1.2 of Schedule 14 in relation to the Borough Council and paragraph 2 of Schedule 15 in relation to the County Council PROVIDED ALWAYS that where before

the Relevant BC or CC Contribution Date or Relevant Underspend Date (whichever is applicable) a Contributions Contract(s) has been entered into by the Borough Council or the County Council (as appropriate) in respect of the intended purposes of the relevant Contribution the unexpended part of the relevant Contribution shall not be repaid until such payments pursuant to such Contributions Contract(s) is made and the unexpended part of the Contributions to be repaid (if any) shall not include such payment pursuant to any such Contributions Contract(s).

6. CERTIFICATES OF COMPLIANCE

- 6.1 Upon reasonable request from the Owners and subject to payment of the Borough Council's reasonable and proper professional costs and charges the Borough Council shall certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed and request that a note thereof shall be registered on the Register of Local Land Charges.
- 6.2 Upon reasonable request from the Owners and subject to payment of the Council's reasonable and proper professional costs and charges the Council shall certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed and request that a note thereof shall be registered on the Register of Local Land Charges.
- 6.3 Upon reasonable request from the Owners and subject to payment of the County Council's reasonable and proper professional costs and charges the County Council shall certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed.

7. COVENANTS

- 7.1 The Owners covenant to observe and perform the obligations set out in Schedules 1 to 13, Schedule 16 and any relevant clauses in this Deed.
- 7.2 The Second Owner separately covenants to comply with the viability obligations set out in paragraphs 1.1, 1.2, 1.6, 2.1, 2.2, 3.1, 3.2, 3.4, 3.6, 4.3 and 4.4 of Part 2 of Schedule 2 to this Deed PROVIDED THAT it may make a written application to the Borough Council to nominate and substitute an alternative covenantor to undertake and fulfil the same obligations and the Borough Council shall act reasonably in accordance with the terms of clause 2.9 of this Deed in agreeing the substitution thereof.
- 7.3 The Borough Council covenants to observe and perform the obligations set out in Schedule 14, those obligations imposed on it pursuant to Schedule 2, Part 2 of Schedule 4, and Part 2 of Schedule 6 and Schedule 14 and any other obligations imposed on the Borough Council in this Deed.
- 7.4 The County Council covenants to observe and perform the obligations set out in Part 1 of Schedule 4 and Schedule 15 and any other obligations imposed on the County Council in this Deed.
- 7.5 In order to ensure the effective delivery of development across Ipswich Garden Suburb the Owners covenant with the Borough Council and the County Council that they will use Reasonable Endeavours to ensure that all new infrastructure and services including access, utilities, energy and sewerage/drainage infrastructure:
- 7.5.1 is designed and built to accommodate the proposed level of development proposed for the sites as set out in Local Plan policy CS10 and the Ipswich Garden Suburb SPD;

- 7.5.2 is fully integrated across the Ipswich Garden Suburb site without any restriction, impediment or ransom between sites; and
- 7.5.3 is delivered in accordance with the requirements of the IGS Infrastructure Delivery Plan subject to the deliberations of the Ipswich Garden Suburb Delivery Board.
- 7.6 The Second Owner separately covenants to use Reasonable Endeavours (for the purposes of this clause 7.6 only Reasonable Endeavours shall not require the Second Owner to be required to enter into contracts with the First Owner in relation to compliance with the Skylarks Agreement nor pay any monies for whatever reason to the First Owner associated with the land to which the Skylarks Agreement relates nor obligations within that Skylarks Agreement) to cooperate with the Borough Council to compel the First Owner to comply with the obligations in the Skylarks Agreement, insofar as those obligations relate to any land within the First Owner's ownership, PROVIDED THAT this obligation:
- 7.6.1 does not bind the Second Owner's successors in title;
- 7.6.2 does not create joint and several liability in respect of the First Owner's obligations in the Skylarks Agreement; and
- 7.6.3 if the Second Owner disposes of its interest in the Site or any part thereof, the Second Owner may assign the obligation in clause 7.6 to the person acquiring such interest and only upon submitting satisfactory evidence to the Borough Council that the obligation has been effectively assigned to the person acquiring an interest, the Second Owner's liability under clause 7.6 shall cease.

8. BOROUGH COUNCIL'S, COUNCIL'S AND COUNTY COUNCIL'S POWERS

- 8.1 Nothing in this Deed shall fetter the statutory rights, powers and duties of the Borough Council or the Council as local planning authorities.
- 8.2 Nothing in this Deed shall fetter the statutory rights, powers and duties of the County Council as a local planning authority and/or the local highway authority and/or the local education authority and/or local waste authority and/or local library authority and/or of any other rights, discretions, functions, powers, duties and obligations of the County Council in the exercise of its functions as a local authority as the case may be.

9. REALLOCATION OF CONTRIBUTIONS

- 9.1 The parties to this Deed hereby acknowledge that:
- 9.1.1 the Borough Council Contributions and the County Council Contributions secured herein have been reduced from those originally set out in the First Committee Resolution;
- 9.1.2 the reductions have been accepted by the Borough Council and the County Council for reasons of viability and conditional upon the inclusion of the Contribution Re-allocation Mechanism; and
- 9.1.3 the Borough Council Contributions, the County Council Contributions and the Contribution Re-allocation Mechanism fall properly to be considered as material to the determination of the Application and in compliance with Regulations 122 of the CIL Regulations.

- 9.2 In the event of each and any instance of a BC and/or SCC Contribution Underspend, the Borough Council may use the Residual Contribution Sum toward the provision of additional off-site Affordable Housing PROVIDED THAT the Borough Council shall not expend any monies toward the provision of additional off-site Affordable Housing where that provision taken together with the Affordable Housing provided within the Development AND any Surplus paid to the Borough Council in accordance with the provisions of Part 2 of Schedule 2 to this Deed, would exceed the Affordable Housing Policy Requirement PROVIDED FURTHER THAT if at the Relevant Underspend Date there remains any unspent Residual Contribution Sum then the provisions of paragraphs 1.2 of Schedule 14 and paragraph 2 of Schedule 15 shall in each case apply.

10. WAIVER

No waiver (whether expressed or implied) by the Borough Council or the Council or County Council 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 Borough Council or the Council or County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11. CHANGE OF OWNERSHIP

- 11.1 The Owners covenant to give the Borough Council, the Council and the County Council immediate written notice of any change in ownership in the Site occurring before all the obligations under this Deed have been discharged, such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan to be provided at the same time as the written notice.

- 11.2 Save for the notification obligations in Schedule 16, the Owners shall not be required to notify the Borough Council, the Council or the County Council of any of the following:

- 11.2.1 the sale or letting of any individual Residential Unit;
- 11.2.2 the sale or letting of any individual Commercial Unit(s); or
- 11.2.3 the grant of rights to statutory undertakers within the meaning of section 262 of the 1990 Act.

12. REGISTRATION AS A LOCAL LAND CHARGE

It is hereby agreed and declared between the parties hereto that the Borough Council and the Council shall forthwith register this Deed as a Local Land Charge for the purposes of the Local Land Charges Act 1975.

13. THIRD PARTIES' RIGHTS

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1990 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

14. MONITORING

- 14.1 On the first anniversary of this Deed and every six months thereafter until the Occupation of the last Residential Unit constructed pursuant to the Planning Permission the Owners shall

provide a monitoring report to the Borough Council and to the IGS Delivery Board which shall set out the following:

- 14.1.1 details of progress in relation to each of the obligations contained in this Deed;
- 14.1.2 the total Contributions paid to the Borough Council and the County Council pursuant to this Deed;
- 14.1.3 the number of Market Value Units and Affordable Housing Units Occupied in the preceding quarter and in total since Commencement; and
- 14.1.4 the projected number of Market Value Units and Affordable Housing Units anticipated to be Completed within the next six months.

15. DISPUTE RESOLUTION

15.1 In the event of any dispute or difference arising between any or all of the Parties to this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Deed) such dispute or difference may be referred to the Expert and it is further agreed that:

- 15.1.1 the determination of the Expert shall be:
 - 15.1.1.1 final and binding on the parties to the dispute; and
 - 15.1.1.2 complied with by the parties to the dispute,save in the case of manifest error;
- 15.1.2 the parties to the dispute shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
- 15.1.3 the Expert's costs shall be borne in such proportions as he/she may direct failing which each party to the dispute shall bear its own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of parties to the dispute (excluding the Expert) to the reference;
- 15.1.4 the Expert shall be appointed subject to an express requirement that he/she reaches a decision and communicates it to the parties to the dispute within the minimum practicable timescales allowing for the nature and complexity of the dispute and in any event not more than 35 (thirty five) Working Days from the date of his/her appointment to act; and
- 15.1.5 the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee shall be appointed in the same manner as the Expert.

15.2 The provisions of this clause 15 shall not affect the ability of the Borough Council or the Council or the County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

- 15.3 The provisions of this clause 15 will not affect the ability of any Party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

16. VARIATIONS

Save as provided in clause 17 below, no variation of this Deed shall be effective unless made by Deed or pursuant to the determination of an application made under section 106A of the 1990 Act or an appeal pursuant to section 106B of the 1990 Act.

17. SECTION 73 APPLICATIONS

- 17.1 In the event that any new planning permission is granted in respect of the Development pursuant to section 73 of the 1990 Act then, subject to agreement between the Parties (or their successors) with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:

17.1.1 the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind the Site in respect of any planning permission granted pursuant to section 73 of the 1990 Act; and

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

PROVIDED THAT nothing in this clause shall fetter the discretion of the Borough Council or the Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to section 106 of the 1990 Act or a modification agreement pursuant to section 106A of the 1990 Act.

- 17.2 Subject to the proviso at clause 17.1 of this Deed (and provided further that no more than 1100 (one thousand one hundred) Residential Units are proposed), if a new planning application pursuant to Section 73 of the 1990 Act has been both submitted and validated within two (2) years of the date of this Deed, the Parties agree that in relation to any viability assessment that might be undertaken in association with such planning application:

17.2.1 shall be treated and carried out the same as a Viability Assessment (as defined in this Deed);

17.2.2 save for any Early Viability Assessment, the Viability Review Template, Viability Review Explanatory User Guide and Viability Appraisal Inputs shall apply and be used to carry out such viability assessment;

17.2.3 the provisions of Part 2 of Schedule 2 and associated definitions shall apply to such viability assessment such that:

17.2.3.1 if the assessment is submitted prior to or at the same time as an Early Viability Assessment: the terms Early Viability Surplus Deferred Affordable Housing Units, Deferred Affordable Housing Scheme and

Deferred Contributions (as defined in this Deed), paragraphs 2.1, 2.4 to 2.6 (inclusive), 3, 4, 5.1 to 5.3 (inclusive), 6.2, paragraphs 7.1.1, 7.1.2.1, 7.1.3.1 and 7.1.4.1;

17.2.3.2 if the assessment is submitted prior to or at the same time as Viability Assessment 1: terms Surplus, Deferred Affordable Housing Units, Deferred Affordable Housing Scheme and Deferred Contributions (as defined in this Deed), paragraphs 2.2 to 2.6 (inclusive), 3, 4, 5.1, 5.3, 6.1, paragraphs 7.1.1, 7.1.2.2, 7.1.3.2 and 7.1.4.2;

17.2.3.3 if the assessment is submitted prior to or at the same time as Viability Assessment 2: terms Surplus, Deferred Affordable Housing Units, Deferred Affordable Housing Scheme and Deferred Contributions (as defined in this Deed), paragraphs 2.2 to 2.6 (inclusive), 3, 4, 5.1, 5.3, 6.1, paragraphs 7.1.1, 7.1.2.3, 7.1.3.3 and 7.1.4.3.

18. SERVICE OF NOTICES

18.1 All notices, requests, demands or other written communications to or upon the respective Parties hereto pursuant to this Deed shall be deemed to have been properly given or made if sent by hand or by courier service or letter by way of first class post or recorded delivery post to the Party to which such notice, request, demand or other written communication is to be given or made under this Deed and addressed as follows:

18.1.1 if to the Borough Council marked for the attention of Operations Manager (Planning & Development) and Principal Planning Officer - Special Projects, Ipswich Borough Council, Grafton House, 15-17 Russell Road, Ipswich IP1 2DE;

18.1.2 if to the Council to East Suffolk Council of East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, IP12 1RT marked for the attention of: Head of Service - Strategic Management;

18.1.3 if to the County Council to Constantine House, 5 Constantine Road, Ipswich, Suffolk, IP1 2DH marked for the attention of the Director of Resource Management;

18.1.4 if to the First Owner to the address set out above or as otherwise notified from time to time including pursuant to clause 11.1; and

18.1.5 if to the Second Owner to Crest House, Pyrcroft Road, Chertsey Surrey, KT16 9GN marked for the attention of the Company Secretary or as otherwise notified from time to time including pursuant to clause 11.1.

18.2 Any notice request or demand or other written communication shall be deemed to have been served as follows:-

18.2.1 if delivered by hand, the next Working Day after the day of delivery unless the delivery was signed for in which case it shall be the time the delivery was signed for that service will be deemed to have occurred;

18.2.2 if sent by first class post, the day 2 (two) Working Days after the date of posting; or

18.2.3 if sent by recorded delivery, at the time delivery was signed for

and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) as the case may be.

- 18.3 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 18.4 Any notice or other written communication to be given by the Borough Council, the Council or the County Council will be deemed valid and effectual if on its face it is signed on behalf of the Borough Council, the Council or the County Council (as applicable) by an officer or duly authorised signatory.

19. BOROUGH COUNCIL'S, COUNCIL'S AND COUNTY COUNCIL'S LEGAL COSTS

- 19.1 The Owners agree that upon completion of this Deed it will pay the Borough Council's reasonable legal costs properly incurred in the negotiation and completion of this Deed.
- 19.2 The Owners agree that upon completion of this Deed it will pay the Council's reasonable legal costs properly incurred in the negotiation and completion of this Deed up to the sum of £300.00 (three hundred pounds).
- 19.3 The Owners agree that upon completion of this Deed it will pay the County Council's reasonable legal costs properly incurred in the negotiation and completion of this Deed.

20. VAT

If VAT becomes payable on payments made under this Deed that VAT will be additional to the specified payments and any VAT due will be paid following production of a valid VAT invoice in respect of any vatiable supplies properly incurred under this Deed.

21. INTEREST

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

22. REASONABLENESS

Unless expressly stated otherwise where under this Deed any approval or consent, certificate, direction, authority, agreement, action, expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval or consent, certificate, direction, authority, agreement, action, expression of satisfaction, or response, it will not be unreasonable or unreasonably withheld or delayed and the Parties will act reasonably at all times.

23. INDEXATION

Where any obligation in this Deed requires the Owners to pay, provide or make available any sum of money (by way of Contribution or any instalment thereof or otherwise), the amount to be paid, provided or made available shall be adjusted upwards only by reference to changes in the relevant Index in accordance with the following formula:

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

where:

A is the sum of money stated in this Deed;

B the figure shown in the relevant Index for the period immediately prior to the date on which the sum concerned is due to be paid or where such sum is paid earlier than it is due the relevant Index for the period immediately prior to the date upon which it is paid under the provisions of this Deed;

C is the figure shown in the relevant Index for the period immediately prior to the date the Planning Permission is granted; and

D is the amount of money required to be paid,

PROVIDED THAT if the relevant Index is no longer maintained the above formula will be applied *mutatis mutandis* (so far as it relates to periods after it ceases to be so maintained) by reference to such other publication or index as may be agreed from time to time between the Parties.

24. CHALLENGE AND TERMINATION

24.1 Notification of a Challenge

If there is a Challenged Permission then as soon as reasonably practicable following the date that the Borough Council and/or Council is aware of such Challenge, the Borough Council and/or Council will notify the Owners and the County Council of such Challenge, including any key dates relevant to associated legal proceedings (the "Notice Date").

24.2 Temporary suspension of the Deed

24.2.1 If the Owners cease to carry out any works pursuant to a Challenged Permission, then the requirement for the Owners or the Borough Council to comply with or comply further with the obligations contained in this Deed that have not fallen due (whether they be payments or other obligations) will be suspended temporarily from the Notice Date (save in respect of the rights of the Borough Council and/or the County Council in relation to any subsisting breach of this Deed arising before the cessation of works pursuant to the Challenged Permission by the Owners) until the Final Disposal of the legal proceedings.

24.2.2 If the Challenged Permission is not quashed, the requirement to comply or further comply (as applicable) with any obligation contained in this Deed in accordance with its terms relating to the Challenged Permission (as may be varied by order of the court) will recommence with immediate effect following a decision on the

Challenged Permission (unless the decision is that the Planning Permission be quashed, cancelled or revoked).

24.2.3 In the event of a Challenge, any time-limits for compliance with the obligations contained in this Deed will be extended by the same period of suspension calculated from the Notice Date to the date of the Final Disposal of the legal proceedings SAVE THAT any compliance with obligations linked to restriction(s) on Occupation, shall not be affected and/or extended by reference to this clause 24 unless agreed by the Borough Council and/or the County Council (as applicable) at their sole discretion.

25. RIGHT OF ENTRY

25.1 At all times on not less than 48 (forty eight) hours written notice except in case of emergency with or without notice the Owners shall allow any employee or agent of either or all of the Borough Council or the Council or the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT the access to enter the Site as provided for by this clause shall only be permitted on the basis that if reasonably requested by the Owner the Borough Council's or the Council's or the County Council's (as applicable) duly authorised representatives shall undertake appropriate health and safety training to ensure compliance with relevant statutory requirements whilst on the Site AND will undertake appropriate induction training as may be directed by the Owner before entering the Site.

26. WARRANTY

26.1 The Owners covenant and warrant in respect of their respective ownerships in the Site to the Borough Council and the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

27. MISCELLANEOUS

27.1 The Owners agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived.

27.2 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owners.

27.3 The Parties agree that any mortgagee or chargee from time to time will only be liable for any breach of the provisions of this Deed:-

27.3.1 to the extent that such breach affects a part of the Site in which the mortgagee or chargee has an extant legal interest; and

27.3.2 arising during such period as it is a mortgagee or chargee in possession of the whole or any part of the Site.

27.4 For the avoidance of doubt, a mortgagee or chargee will not be liable for any breach of the provisions of this Deed after it has parted with or released its interest in the relevant part of the Site save for any antecedent breaches.

28. JURISDICTION AND LAW

- 28.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 28.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).
- 28.3 If any provision of this Deed is declared by any court to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the Parties shall amend that provision in accordance with the decision of the court provided that any Party may seek the written consent of the other Parties to the termination of this Deed on such terms (including the entering into of another agreement) as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the Parties.

29. DATE OF DELIVERY

- 29.1 This Deed is delivered on the date of this Deed.

30. COUNTERPARTS

- 30.1 This Deed may be executed in any number of counterparts, each of which when executed (and delivered) shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.