

22. INDEXATION

1.1 Where any obligation in this Deed requires the Owner 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 increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times C/D$ where:

1.1.1 A is the sum payable under this Deed;

1.1.2 B is the original sum calculated as the sum payable;

1.1.3 C is the Index for the month two (2) months before the date on which the sum is payable;

1.1.4 D is the Index for the month two (2) months before the date of this Deed; and

1.1.5 C/D is Not less than 1

23. TERMINATION

23.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires by effluxion of time before the Commencement Date or is modified (without the consent of the Owner), the Borough Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed

24. RIGHT OF ENTRY

At all times on not less than forty-eight (48) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of either or all of the Borough 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 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.

25. WARRANTY

The Owner covenants and warrants in respect of its interests in the Site to the Borough Council and the County Council that it has full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site other than as set out in this Deed whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

26. MISCELLANEOUS

26.1 The Owner agrees 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.

- 26.2 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 Owner and at no cost to the Borough Council, or the County Council.
- 26.3 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:-
- 26.3.1 to the extent that such breach affects a part of the Site in which the mortgagee or chargee has an extant legal interest; and
- 26.3.2 arising during such period as it is a mortgagee or chargee in possession of the whole or any part of the Site.
- 26.4 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 breach(es).

27. JURISDICTION AND LAW

- 27.1 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.
- 27.2 Each Party irrevocably agrees that the courts of England 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).
- 27.3 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.

28. DATE OF DELIVERY

This Deed is delivered on the date of this Deed.

29. COUNTERPARTS

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 PROVIDED THAT no counterpart shall be effective until each party has executed and delivered at least one counterpart.

SCHEDULE 1: NOTICE AND MONITORING

The Owner covenants with the Borough Council and the County Council as follows:

1. **Notice**

- 1.1 To serve the Commencement Notice on the Borough Council and the County Council at least 15 (fifteen) Working Days prior to Commencement of Development;
- 1.2 Not to Commence the Development unless and until it has complied with paragraph 1.1 of this Schedule 1.
- 1.3 To inform by way of written notice within (7) days following:
 - a) Occupation of the 1st (first) Residential Unit
 - b) Occupation of 50% of the Residential Units
 - c) First Occupation of the last Residential Unit

2. **Monitoring**

- 2.1 To pay the County Council Monitoring Contribution to the County Council upon completion of this Deed.
- 2.2 Not to Commence Development until it has paid the County Council Monitoring Contribution to the County Council.

SCHEDULE 2: AFFORDABLE HOUSING

The Owner covenants with the Borough Council:

1. Not to Commence Development until it has submitted and gained the Borough Council's written approval of the Affordable Housing Delivery Scheme.
2. To carry out the Development in accordance with any approved Affordable Housing Delivery Scheme;
3. To provide:
 - 3.1 a minimum of 35% (thirty five percent) of the Residential Units as Affordable Housing Units;
 - 3.2 not less than 60% (sixty percent) of the Affordable Housing Units within the Development as Affordable Rented Units (being up to 6 (six) Affordable Rented Units) (unless otherwise agreed in writing between the Owner and the Borough Council); and
 - 3.3 not more than 40% (forty percent) of the Affordable Housing Units within the Development as Intermediate Affordable Housing Units (being up to 4 (four) Intermediate Affordable Housing Units) (unless otherwise agreed in writing between the Owner and the Borough Council);
4. In the event the Owner proposes to dispose of any Affordable Housing Unit(s) to an Affordable Housing Provider that is not an Approved Affordable Housing Provider, the Owner shall prior to disposal obtain the Borough Council's written approval for the proposed Affordable Housing Provider(s) for the relevant Affordable Housing Unit(s), (such approval not to be unreasonably withheld or delayed).
5. The Owner shall:
 - 5.1 proceed diligently and with all due expedition to negotiate and enter into an Affordable Housing Contract in respect of the relevant Affordable Housing Units to be provided pursuant to this Schedule;
 - 5.2 notify the Borough Council within 10 (ten) Working Days of entering into an Affordable Housing Contract.
 - 5.3 not Occupy more than 50% (fifty per cent) of the Market Value Units unless and until 75% (seventy five percent) of the Affordable Housing Units have:
 - 5.3.1 in relation to the Affordable Rented Units been completed and transferred to an Affordable Housing Provider pursuant to an Affordable Housing Contract; and
 - 5.3.2 in relation to the Intermediate Affordable Housing Units been Completed and made available for Occupation.
 - 5.4 not Occupy more than 75% (seventy five percent) of the Market Value Units unless and until 100% (100 percent) of the Affordable Housing Units have:
 - 5.4.1 in relation to the Affordable Rented Units been completed and transferred to an Affordable Housing Provider pursuant to an Affordable Housing Contract; and

5.4.2 in relation to the Intermediate Affordable Housing Units been Completed and made available for Occupation.

5.5 not provide the Affordable Housing Units otherwise than in accordance with the following Affordable Housing Bedroom Mix (unless otherwise agreed in writing between the Owner and the Borough Council):

Unit Type	Proportion of Total Affordable Housing Units
2 bed dwellings	70%
3 bed dwellings	30%

5.6 not offer or make the Affordable Rented Units available otherwise than in accordance with the Gateway to Home Choice Regional CBL unless from time to time it is otherwise agreed in writing between the Owner and the Borough Council save where the Affordable Rented Units have been transferred to an Affordable Housing Provider in which case any agreement from time to time shall be as between that Affordable Housing Provider and the Borough Council.

6. Save as provided for in paragraph 6.1 of this Part of this Schedule, the Owner covenants with the Borough Council in respect of the Affordable Housing Units not to Occupy or cause or permit to become Occupied the Affordable Housing Units for any purpose other than for Affordable Housing in Perpetuity.

6.1 The provisions of this Schedule 2 shall not be binding on:

6.1.1 any mortgagee or chargee or any successor in title thereto and their respective mortgagees or chargees; or

6.1.2 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

6.1.2.1 such mortgagee or chargee or Receiver shall first give written notice to the Borough Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of not less than three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Affordable Housing Provider or to the Borough Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- 6.1.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely.
 - 6.1.3 any Shared Ownership Unit where 100 per cent of the equity in that Shared Ownership Unit has been purchased by the tenant via Staircasing;
 - 6.1.4 any completed Affordable Housing Units where an Affordable Housing Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable;
 - 6.1.5 any completed Affordable Housing Units where a Affordable Housing Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof;
 - 6.1.6 any Intermediate Affordable Housing Units where the occupier is also the owner of the entire equity in the property; or
 - 6.1.7 any person or body deriving title through or from any of the parties mentioned in this paragraph 6.1.
- 6.2 Upon the transfer of any Affordable Housing Units to an Affordable Housing Provider the obligations imposed on the Owner in this Schedule 2 in relation to those Affordable Housing Units shall be observed and performed by the Affordable Housing Provider and where any obligation is expressed as an obligation on the Owner to procure any act on the part of the Affordable Housing Provider, such obligation shall be construed as an obligation of the Affordable Housing Provider to itself perform the obligation in question.
7. Subject to the terms of this Schedule:
- 7.1 no Affordable Rented Unit provided under the terms of this Schedule shall be Occupied other than as an Affordable Rented Unit and all occupational leases and tenancies of such units shall include a provision preventing sub-letting and underletting save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Affordable Rented Unit;
 - 7.2 the Affordable Housing Provider(s) shall submit annual reports commencing on the first Occupation of any of the Affordable Rented Units demonstrating that the Affordable Rents charged do not exceed 80% of Open Market Rent;
 - 7.3 no Intermediate Affordable Housing Unit provided under the terms of this Schedule shall be Occupied other than as an Intermediate Affordable Housing Unit save that this shall not prevent an occupational tenant having the right to take in a lodger or share occupation with another person provided that the occupational lease or tenancy

contains a provision to the effect that the tenant must obtain the prior written consent of the landlord and is not permitted to grant any assured tenancy of any part of the Intermediate Affordable Housing Unit.

SCHEDULE 3: EDUCATION

Part 1: Primary Education Contribution

The Owner covenants:

1. To pay the first instalment of the Primary Education Contribution in the sum of £71,778 (seventy-one thousand seven hundred and seventy-eight pounds) Index Linked to the County Council prior to the first Occupation of the first Residential Unit.
2. Not to Occupy or permit or allow any Occupation of any Residential Units unless and until the first instalment of the Primary Education Contribution in the sum of £71,778 (seventy-one thousand seven hundred and seventy eight pounds) Index Linked has been paid to the County Council.
3. To pay the second instalment of the Primary Education Contribution in the sum of £71,778 (seventy-one thousand seven hundred and seventy-eight pounds) Index Linked to the County Council prior to the Occupation of 50% (fifty per cent) of the Residential Units.
4. Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units unless and until the second instalment of the Primary Education Contribution in the sum of £71,778 (seventy-one thousand seven hundred and seventy-eight pounds) Index Linked has been paid to the County Council.

Part 2: Early Years Contribution

The Owner covenants:

1. To pay the first instalment of the Early Years Contribution in the sum of £30,762 (thirty thousand seven hundred and sixty-two pounds) Index Linked to the County Council prior to the first Occupation of the first Residential Unit.
2. Not to Occupy or permit or allow any Occupation of any Residential Units unless and until the first instalment of the Early Years Contribution in the sum of £30,762 (thirty thousand seven hundred and sixty-two pounds) Index Linked has been paid to the County Council.
3. To pay the second instalment of the Early Years Contribution in the sum of £30,762 (thirty thousand seven hundred and sixty-two pounds) Index Linked to the County Council prior to the Occupation of 50% (fifty per cent) of the Residential Units.
4. Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units unless and until the second instalment of the Primary Education Contribution in the sum of £30,762 (thirty thousand seven hundred and sixty-two pounds) Index Linked has been paid to the County Council.

Part 3: Secondary Education Contribution

The Owner covenants:

1. To pay to the County Council the first instalment of the Secondary Education Contribution in the sum of £62,323 (sixty two thousand three hundred and twenty three pounds) Index Linked to the County Council prior to the first Occupation of the 1st (first) Residential Unit.
2. Not to Occupy or permit or allow any Occupation of any Residential Units unless and until the first instalment of the Secondary Education Contribution in the sum of £62,323 (sixty two thousand three hundred and twenty three pounds) Index Linked has been paid to the County Council.
3. To pay the second instalment of the Secondary Education Contribution in the sum of £62,323 (sixty two thousand three hundred and twenty three pounds) Index Linked to the County Council prior to the Occupation of 50% (fifty per cent) of the Residential Units.
4. Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units unless and until the second instalment of the Secondary Education Contribution in the sum of £62,323 (sixty two thousand three hundred and twenty three pounds) Index Linked has been paid to the County Council.

Part 4: Sixth Form Education Contribution

1. To pay the first instalment of the Sixth Form Education Contribution in the sum of £11,888 (eleven thousand eight hundred and eighty-eight pounds) Index Linked to the County Council prior to the first Occupation of the 1st (first) Residential Unit.
2. Not to Occupy or permit or allow any Occupation of any Residential Units unless and until the first instalment of the Sixth Form Education Contribution in the sum of £11,888 (eleven thousand eight hundred and eighty-eight pounds) Index Linked has been paid to the County Council.
3. To pay the second instalment of the Sixth Form Education Contribution in the sum of £11,888 (eleven thousand eight hundred and eighty-eight pounds) Index Linked to the County Council prior to the Occupation of 50% (fifty per cent) of the Residential Units.
4. Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units unless and until the second instalment of the Sixth Form Education Contribution in the sum of £11,888 (eleven thousand eight hundred and eighty-eight pounds) Index Linked has been paid to the County Council.

SCCHEDULE 4: HIGHWAYS AND TRANSPORT

The Owner covenants with the County Council as follows:

1. Off Site Sustainable Transport Contribution

- 1.1 To pay 50% (fifty percent) of the Off Site Sustainable Transport Contribution Index Linked prior to the first Occupation of the Development;
- 1.2 Not to Occupy or permit or allow any Occupation of the Development until 50% (fifty percent) the Off Site Sustainable Transport Contribution Index Linked has been paid to the County Council;
- 1.3 To pay 50% (fifty percent) of the Off Site Sustainable Transport Contribution Index Linked prior to the Occupation of 50% (fifty per cent) of the Residential Units;
- 1.4 Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units on the Development until one hundred percent (100%) of the Off Site Sustainable Transport Contribution Index Linked has been paid to the County Council.

2. Bus Services Contribution

- 2.1 To pay the Bus Services Contribution Index Linked prior to the Occupation of 50% (fifty per cent) of the Residential Units.
- 2.2 Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units on the Development unless and until the Bus Services Contribution Index Linked has been paid to the County Council;

3. Public Rights of Way Contribution

- 3.1 To pay the Public Rights of Way Contribution Index Linked prior to first Occupation of the Development;
- 3.2 Not to Occupy or permit or allow any Occupation of Development unless and until the Public Rights of Way Contribution Index Linked has been paid to the County Council.

4. Off Site Traffic Mitigation Management Contribution

- 4.1 To pay fifty percent (50%) of the Off Site Traffic Mitigation Management Contribution Index Linked prior to first Occupation of the Development;
- 4.2 Not to Occupy or permit or allow any Occupation of the Development unless and until fifty percent (50%) of the Off Site Traffic Mitigation Contribution Index Linked has been paid in full to the County Council.
- 4.3 To pay a further 50% (fifty percent) of the Off Site Traffic Mitigation Contribution prior to the Occupation of 50% (fifty per cent) of the Residential Units;
- 4.4 Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units on the Development until one hundred percent (100%) of the Off Site Traffic Mitigation Management Contribution Index Linked has been paid to the County Council.

5. **Off Site Highway Improvements Contribution**

- 5.1 To pay fifty percent (50%) of the Off Site Highway Improvements Contribution Index Linked prior to first Occupation of the Development;
- 5.2 Not to Occupy or permit or allow any Occupation of the Development unless and until fifty percent (50%) of the Off Site Highway Improvements Contribution Index Linked has been paid in full to the County Council.
- 5.3 To pay a further 50% (fifty percent) of the Off Site Highway Improvements Contribution Index Linked prior to the Occupation of 50% (fifty per cent) of the Residential Units;
- 5.4 Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units on the Development until one hundred percent (100%) of the Off Site Highway Improvements Contribution Index Linked has been paid to the County Council.

6. **Westerfield Station Improvements Contribution**

- 6.1 To pay 50% (fifty percent) of the Westerfield Station Improvements Contribution Index Linked prior to first Occupation of the Development;
- 6.2 Not to Occupy or permit or allow any Occupation of the Development unless and until 50% (fifty percent) of the Westerfield Station Improvements Contribution Index Linked has been paid in full to the County Council.
- 6.3 To pay a further 50% (fifty percent) of the Westerfield Station Improvements Contribution Index Linked prior to the Occupation of 50% (fifty per cent) of the Residential Units;
- 6.4 Not to Occupy or permit or allow Occupation of 50% (fifty per cent) of the Residential Units on the Development until one hundred percent (100%) of the Westerfield Station Improvements Contribution Index Linked has been paid to the County Council.

**SCHEDULE 5: OPEN SPACE AND GREEN
INFRASTRUCTURE**

The Owner covenants and agrees with the Borough Council:

1. Subject to paragraph 2 of this Schedule to provide and make available the Open Space for public use (on foot and as may be applicable by bicycle) 24 (twenty-four) hours a day.
2. that the Open Space may be temporarily closed to the public or individual members of the public (as appropriate) (unless in an emergency) if and to the extent that occasional temporary closure (not exceeding one day's length at any time in any calendar year) is necessary to assert rights of proprietorship to prevent public or private rights from coming into being by means of prescription or other process of law PROVIDED ALWAYS THAT this temporary closure wording in paragraph 1 of this Schedule 5 shall not apply if any of the following applies in which case the closure may be permitted to be for such period of time that is reasonable in the circumstances:
 - 2.1 works of maintenance, repair, cleaning, renewal or resurfacing need to be carried out;
 - 2.2 there is a risk to public health and safety;
 - 2.3 closure is necessary because of the lawful requirements of the police or any other competent authority; or
 - 2.4 the Borough Council and the Owner agree that temporary closure is appropriate for some other proper reason,

PROVIDED ALWAYS THAT such temporary closure of the Open Space (or the relevant part as applicable) shall be for the minimum period reasonably necessary and the Open Space shall be re-opened as soon as reasonably practicable thereafter

3. to maintain the Open Space in accordance with the approved Open Space Maintenance and Management Scheme in Perpetuity or until such time as the freehold of the Open Space:
 - 3.1 is transferred to the Management Company (in accordance with the Open Space Transfer) who shall thereafter become responsible and liable for the management and maintenance of the Open Space in accordance with the approved Open Space Maintenance and Management Scheme in Perpetuity; and
 - 3.2 an appropriate sum of money has been paid to the Management Company as necessary and reasonable in the circumstances to fund the management and maintenance of the Open Space in accordance with the Open Space Maintenance and Management Scheme during the period up until the point in time that funds received from future owners of the Residential Units are sufficient to fully fund such management and maintenance such sum having been previously approved by the Borough Council.
4. Not to dispose of the Open Space other than to a Management Company in accordance with the terms of this Schedule and Schedule 8.
5. The Owner covenants:

- 5.1 to pay the Public Open Space Commuted Sum to the Borough Council in 15 (fifteen) equal annual instalments of £6567.12 (six thousand five hundred and sixty seven pounds and 12 pence) (Index Linked) each, the first instalment payable prior to first Occupation of the Development and not to Occupy the Development until the first instalment has been paid.
- 5.2 to pay the subsequent equal instalments of the Public Open Space Commuted Sum to the Borough Council on the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 15th anniversaries of the date of payment of the first instalment.
6. To pay:
 - 6.1 50% (fifty percent) of the Green Infrastructure Contribution to the Borough Council prior to Occupation of the Development and not to Occupy the Development unless and until 50% (fifty percent) of the Green Infrastructure Contribution has been paid to the Borough Council;
 - 6.2 the remainder of the Green Infrastructure Contribution to the Borough Council prior to Occupation of any more than 50% (fifty per cent) of the Residential Units and not to Occupy any more than 50% (fifty per cent) Residential Units unless and until the Green Infrastructure Contribution has been paid in full to the Borough Council.

SCHEDULE 6: HRA AND REPTILE MITIGATION

The Owner covenants with the Borough Council as follows:

1. **HRA Mitigation: Country Park Commuted Sum**
 - 1.1 To pay the Country Park Commuted Sum prior to Occupation of 50% (fifty per cent) of the Residential Units and not to Occupy any more than 50% (fifty per cent) Residential Units until the Country Park Commuted Sum has been paid.
2. **HRA Mitigation: Country Park Phase Works**
 - 2.1 Not to Occupy any of the Development until the Country Park Phase 1 Works have been Practically Completed and certified as so by the Borough Council.
 - 2.2 Not to Occupy more than 50 (fifty) Residential Units (in aggregate with any IGS Development(s)) until the Country Park Phase 2 Works have been Practically Completed and certified as so by the Borough Council.
 - 2.3 Not to Occupy more than 200 (two hundred) Residential Units (in aggregate with any IGS Development(s)) until the Country Park Phase 3 Works have been Practically Completed and certified as so by the Borough Council.
 - 2.4 Not to Occupy more than 400 (four hundred) Residential Unit (in aggregate with any IGS Development(s)) until the Country Park Phase 4 Works have been Practically Completed and certified as so by the Borough Council.
 - 2.5 Not to Occupy more than 600 (six hundred) Residential Units (in aggregate with any IGS Development(s)) until the Country Park Phase 5 Works have been Practically Completed and certified as so by the Borough Council.
 - 2.6 Not to Occupy more than 800 (eight hundred) Residential Units (in aggregate with any IGS Development(s)) until the Country Park Phase 6 Works have been Practically Completed and certified as so by the Borough Council.
 - 2.7 Not to Occupy more than 1200 (twelve hundred) Residential Units (in aggregate with any IGS Development(s)) until the Country Park Phase 7 Works have been Practically Completed and certified as so by the Borough Council.
3. **Habitats Regulations Mitigation Contribution**
 - 3.1 To pay the Habitats Regulations Mitigation Contribution prior to first Occupation of the Development and not to Occupy the Development until it has paid the Habitats Regulations Mitigation Contribution in full to the Borough Council.
4. **Reptile Mitigation Strategy: Translocation**
 - 4.1 Following the grant of all Reserved Matters Approvals and prior to the translocation of any reptiles within the Site the Owner:

- 4.1.1 shall submit the Reptile Translocation Scheme for the Borough Council's written approval and shall not translocate nor permit the translocation of any reptiles within the Site until the Reptile Translocation Scheme has been approved by the Borough Council; and
- 4.1.2 shall implement the Reptile Translocation Scheme as approved.
- 4.2 shall not Commence Development until all reptiles within the Site have been translocated to the Reptile Translocation Site in accordance with the approved Reptile Translocation Scheme.
5. **Reptile Mitigation Strategy: Ecology Contributions**
- 5.1 To pay the £49,150 (forty nine thousand, one hundred and fifty pounds) of the Ecology Management Contribution to the Borough Council no less than 1 (one) month prior to the start of the translocation of the reptiles in accordance with the Reptile Translocation Scheme submitted by the Owner pursuant to paragraph 4.1 of this Schedule.
- 5.2 To pay the remaining £19,350 (nineteen thousand three hundred and fifty pounds) of the Ecology Management Contribution to the Borough Council in nine equal instalments of £2,150 (two thousand one hundred and fifty pounds) on the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, and 9th anniversaries of the date of payment detailed within paragraph 5.1.
- 5.3 Not to implement the approved Reptile Translocation Scheme and/or Commence Development until the Ecology Management Contribution as detailed in paragraph 5.1 has been paid to the Borough Council.
- 5.4 In the event that more than 450 (four hundred and fifty) reptiles are to be translocated to the Reptile Translocation Site, to pay the Further Ecology Management Contribution.
- 5.5 In the event the Further Ecology Management Contribution becomes payable, not to implement the approved Reptile Translocation Scheme and/or Commence Development until the Further Ecology Management Contribution has been paid to the Borough Council.

SCHEDULE 7: DRAINAGE

The Owner covenants and agrees with the Borough Council:

1. to maintain and manage the SuDS in accordance with the SuDS Maintenance and Management Scheme in Perpetuity or until such time as the freehold of the SuDS Land is transferred to a Management Company (in accordance with the SuDS Transfer) or statutory drainage authority who shall thereafter become responsible and liable for the management and maintenance of the SuDS in accordance with the SuDS Maintenance and Management Scheme in Perpetuity.
2. Save as otherwise agreed in writing with the Borough Council not to dispose of the SuDS other than to a Management Company or a statutory drainage authority in accordance with the terms of this Schedule and Schedule 8.
3. Save as otherwise agreed in writing with the Borough Council:
 - 3.1 not to locate any Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SuDS Land other than those public surface water sewers directly associated with and connected to the SuDS features; and
 - 3.2 not to locate the SuDS Land within an area of the Site that at the time Planning Permission is granted already has Utilities or Foul/Surface Water Drainage and Sewerage located within such area unless these are to be relocated, provided that the Borough Council shall not be permitted to refuse to agree locating Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SuDS Land or locating SuDS Land within an area that already has Utilities or Foul/Surface Water Drainage and Sewerage where the Owner can evidence that this would not adversely affect the functionality of the SuDS features provided further that if the Borough Council fails to respond to the Owner within 40 (forty) Working Days of the Owner seeking agreement to the locating of Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SuDS Land or locating SuDS Land within an area that already has Utilities or Foul/Surface Water Drainage and Sewerage such locating of Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SuDS Land or locating SuDS Land within an area that already has Utilities or Foul/Surface Water Drainage and sewerage shall be deemed to be agreed by the Borough Council

SCHEDULE 8: MANAGEMENT COMPANIES

The Owner covenants with the Borough Council and the County Council (as applicable) as follows:

1. To set up the Management Company(ies) for the purposes of maintaining the common parts of the Development which will include management and maintenance of estate roads, (until they are adopted or dedicated by agreement) and if applicable, include management and maintenance of SuDS and Open Space all in accordance with the Maintenance and Management Schemes.
2. Prior to Occupation of the Development the Owner shall submit evidence of the setting up of a Management Company, including a copy of the memorandum and articles of association, and evidence of the measures that the Owner will employ to secure the necessary funding for the Management Company to undertake the management and maintenance of the common parts of the Development (as referred to in paragraph 1) to the Borough Council and the County Council and shall not Occupy any Residential Unit until the same has been provided to the Borough Council and the Management Company is operational.
3. Not to dispose of any of the Residential Units until details of the Management Company referred to in paragraph 2 has been submitted to and approved in writing by the Borough Council.
4. The Owner shall procure that sufficient and appropriate funding is available to the Management Company(ies) to carry out its/their purposes generally including those in relation to the Maintenance and Management Schemes in accordance with Schedules 5 and 7 of this Deed for so long as is necessary to enable the Management Company(ies) to reasonably carry out its maintenance and other functions after completion of each Residential Unit until the point in time that funds received from future owners of the Residential Units are sufficient to fully fund such management and maintenance responsibilities placed on the Management Company as a result of this Deed.
5. In the event that:
 - 5.1 the Open Space and/or SuDS is not managed and maintained in accordance with the approved Maintenance and Management Schemes to the Borough Council's reasonable satisfaction; and/or
 - 5.2 the Management Company (ies) either ceases to exist or goes into administration

the Borough Council, or the County Council (as appropriate) may upon providing no less than 20 (twenty) Working Days' Written notice enter the Site and carry out work reasonably required to remedy the default and recover the proper and reasonably incurred costs and expenses incurred from the Owner.

SCHEDULE 9: HEALTH CARE

The Owner covenants with the Borough Council as follows:

1. To pay the Health Care Facilities Contribution to the Borough Council prior to Occupation of any more than 50% (fifty per cent) of the Residential Units and not to Occupy any more than 50% (fifty per cent) of the Residential Units until the Health Care Facilities Contribution has been paid in full to the Borough Council.

SCHEDULE 10: DISTRICT CENTRE COMMUNITY FACILITIES

Part 1: Contributions

The Owner covenants with the Borough Council:

1. **Police Services Contribution**

To pay the Police Services Contribution to the Borough Council prior to Occupation of any more than 50% (fifty per cent) of the Residential Units and not to Occupy any more than 50% (fifty per cent) of the Residential Units until it has paid the Police Services Contribution in full to the Borough Council.

2. **Community Development Contribution**

To pay the Community Development Contribution to the Borough Council prior to Occupation of any more than 50% (fifty per cent) of the Residential Units and not to Occupy any more than 50% (fifty per cent) of the Residential Units until it has paid the Community Development Contribution in full to the Borough Council.

Part 2:

The Owner covenants with the County Council:

1. **Library Contribution**

1.1 To pay the Library Contribution Index Linked to the County Council prior to the first Occupation of the 1st (first) Residential Unit.

1.2 Not to Occupy the 1st (first) Residential Unit until it has paid the Library Contribution Index Linked.

2. **Waste Contribution**

2.1 To pay the Waste Contribution Index Linked to the County Council prior to the first Occupation of the 1st (first) Residential Unit

2.2 Not to Occupy the 1st (first) Residential Unit until it has paid the Waste Contribution Index Linked.

SCHEDULE 11: DELIVERY BOARD OBLIGATIONS

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

1. Within three months of the date this Deed the Owner shall nominate and make available the details of a representative to the IGS Delivery Board and shall not Commence Development until such representative has been nominated and their details made available to the IGS Delivery Board.

The Owner and the Borough Council and the County Council covenant with each other as follows:

2. The IGS Delivery Board will:
 - 2.1.1 be comprised of representative(s) of:
 - 2.1.1.1 the Borough Council;
 - 2.1.1.2 the Owner (as landowner);
 - 2.1.1.3 the County Council;
 - 2.1.1.4 and other key stakeholders including but not limited to Homes England;
- receive reports from the Owner on progress with the Development and engagement with other landowners and those with third party interests in IGS;
- 2.1.2 consider the potential phasing and timing of the delivery of the Development; and
 - 2.1.3 identify any issues to the timely delivery of the Development and IGS as a whole and propose resolutions to overcome the issues.

The Parties shall in all good faith and using Reasonable Endeavours seek to uphold and comply with the IGS Delivery Board Terms of Reference and the spirit within which they are drafted but for the avoidance of doubt the IGS Delivery Board shall not have any direct decision making powers or determination over the phasing and timing of the Development nor shall the IGS Delivery Board have any direct decision making powers, or determination on the form or quality of development nor long term management and governance arrangements for IGS which shall be secured and controlled by the Planning Permission and the obligations within this Deed.

3. The Borough Council the County Council and the Owner shall:-
 - 3.1.1 ensure that the group meets at least every three months, at such location and with such parties and at such times and frequency as shall be appropriate from time to time;
 - 3.1.2 notify each other of the names of their respective representatives (and any changes);
 - 3.1.3 ensure their named representatives attend meetings of the IGS Delivery Board (or that substitutes, named in advance and properly briefed, attend in their place);

- 3.1.4 furnish the IGS Delivery Board with such information in relation to the Development as that group may reasonably request;
- 3.1.5 each party shall meet its own costs of such attendance; and
- 3.1.6 co-operate to agree venues for meetings of the IGS Delivery Board such venues to be at no cost to the Owner.

**SCHEDULE 12: GENERAL HOUSING
INFRASTRUCTURE FUNDING OBLIGATIONS**

Part 1: General Obligations

The Borough Council and the Owner acknowledge and where appropriate covenant with each other as follows:

- 1.1 The Borough Council has informed the Owner that Homes England and the Borough Council entered into the GDA on 2nd October 2019 (as amended) and that pursuant to it Homes England agreed to make the Funding available to the Borough Council on the terms of the GDA.
- 1.2 The Owner has not been provided with a copy of the GDA and relies on the representations made by the Borough Council in respect of the terms of the GDA.
- 1.3 For the avoidance of doubt, where any defined terms used in this Schedule are defined elsewhere in this Deed, the defined terms in this Schedule shall apply to this Schedule only.
- 1.4 The Owner is informed by the Borough Council that the Borough Council has entered into the GDA to procure the Funding to deliver the HIF Funded Infrastructure Works that are necessary to facilitate the development of the Wider Project and that there are a number of obligations and liabilities under their GDA and all documentation referred to in the GDA (including but not limited to the Assurance Framework) that relate to the Wider Project.
- 1.5 The Owner agrees pursuant to the terms of this Schedule to take responsibility for its share of such obligations and liabilities as far as they are set out in this Schedule in consideration for and by way of acknowledgment that the HIF Funded Infrastructure Works facilitate the development of the Wider Project which includes the Project and agrees that such obligations and liabilities shall apply from the date of this Deed.
- 1.6 The Owner is informed by the Borough Council that the Borough Council has entered into Other Developer Agreements to enable Other Developers to take responsibility for their share of the obligations and liabilities in relation to the Wider Project under the GDA including proportionate liabilities in relation to the HIF Funded Infrastructure Works and all documentation referred to in the GDA (including (but not limited to) the Assurance Framework).
- 1.7 Subject to compliance with the proviso in this paragraph and with paragraph 1.8 below first happening then once the Owner has disposed of its interest in the Project Site or any part of it the Owner shall be released from all of its obligations in this Schedule 12 insofar as they relate to that part of the Project Site that has been disposed of save in respect of any antecedent breaches and/or liabilities PROVIDED THAT the Owner procures that the purchaser of the Project Site (or part thereof) enters into an equivalent form of covenant to this Schedule 12 in favour of the Borough Council (without any interruption) with the intent and effect that the purchaser will observe and perform the terms of this Schedule 12 as though it had been named as the Owner in it and the Owner shall procure that this Schedule 12 will be enforceable by the Borough Council against such purchaser.
- 1.8 Within 20 (Twenty) Business Days of the date of this Deed the Owner shall apply to Her Majesty's Land Registry to have the following restriction entered onto its title in relation to the Site and provide evidence of the same to the Borough Council:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that

a Deed of covenant as required by paragraph 1.7 of Schedule 12 of the Section 106 Agreement dated [DATE] made between (1) Ipswich Borough Council (2) Suffolk County Council and (3) Shaun Patrick Keegan has been entered into or that it does not apply to the disposition"

- 1.9 The Owner shall (and shall procure that any of its employees, sub-contractors, agents or advisors shall) perform its obligations under this Schedule so that no act or omission by the Owner (or any of its employees, sub-contractors, agents or advisers) in relation thereto shall:-
- 1.9.1 constitute or cause any breach by the Borough Council of any of its obligations under the GDA as set out in this Agreement;
 - 1.9.2 cause any other liability on the part of the Borough Council under the GDA as set out in this Agreement; or
 - 1.9.3 cause the loss of any other rights, entitlements or other benefits of the Borough Council under the GDA as set out in this Agreement.
- 1.10 The Parties acknowledge and agree that where, under this Schedule, any consent or authorisation is required from the Borough Council, it shall be legitimate for the Borough Council to take into account any consent or authorisation which the Borough Council would, in turn, need to obtain under the GDA the details of which have been set out in this Agreement.
- 1.11 The Owner shall perform any acts, confirm any decisions and/or provide any information in a timely manner as is required under this Schedule to enable the Borough Council to comply with its obligations under the GDA the details of which have been set out in this Agreement.
- 1.12 The Borough Council shall perform any acts, confirm any decisions and/or provide any information in a timely manner as is required under the GDA (in so far as the terms have been set out in this Agreement) and the Borough Council shall comply with its obligations under the GDA PROVIDED THAT where in relation to the GDA such performance, confirmation, provision and compliance by the Borough Council requires input from the Owner in accordance with the performance of the Owner's obligations under this Schedule then the Borough Council's performance, confirmation, provision and compliance shall be subject to the performance of the Owner's obligations under this Schedule.

General

- 2.1 All definitions and principles of interpretation set out in the standard terms and conditions of the Funding specified in Part 3 of this Schedule shall apply to all Parts and Appendices of this Schedule together with the Project specific definitions set out in Part 2 and the Assurance Framework and all Parts and Appendices of this Schedule and the Assurance Framework are incorporated into and form part of this Deed.
- 2.2 The Owner acknowledges and agrees that:

Availability Period	the date of this Deed up to (and including) 31 March 2023;
HIF Funded Infrastructure Works	means the infrastructure works being funded pursuant to the GDA including but not limited to the construction of: <ul style="list-style-type: none"> (a) a country park (the "Country Park Works") which shall

	<p>include and house a visitor centre;</p> <p>(b) one pedestrians and cyclist railway bridge (the "Pedestrian Bridge Works"); and</p> <p>(c) one vehicle railway bridge (the "Vehicle Bridge Works")</p> <p>in support of the delivery of new homes in the Ipswich Garden Suburb;</p>
Outputs and Milestones	means the Outputs and Milestones set out in Part 4 of this Schedule;
Project	means a development which forms part of the Wider Project and comprises of the delivery of 28 dwellings (including Affordable Housing) with access off Henley Road, or any other construction on the Project Site the Output of which is to be unlocked by the delivery of the works including the HIF Funded Infrastructure Works;
Project Completion Date	31 December 2038
Project Site	means all of the land and buildings situated within the Wider Project Site as shown for identification purposes only edged red on the Plan at Appendix 1 to this Schedule
Restriction on Title In favour of the Borough Council as set out in Clause 1.8 of Part 1 of this Schedule	Yes
Start Date of Wider Project	1 January 2020
Total Commitment	means up to nine million, eight hundred and sixty eight thousand, three hundred and fifty one pounds (£9,868,351) provided always that where the total Development Costs relating to the HIF Funded Infrastructure Works is less than such amount, the Total Commitment will be reduced by a corresponding amount;
Wider Project	means a development comprising of the delivery of not less than 3,500 residential units (including Affordable Housing), associated infrastructure or any other construction on the Wider Project Site the Output of which is to be unlocked by the delivery of the works including the HIF Funded Infrastructure Works and the

	development shall be implemented by a number of projects including the Project;
Wider Project Site	means all of the land and buildings forming the Ipswich Garden Suburb to which the Wider Project relates and shown for identification purposes only edged blue on the plan at Appendix 1 to this Schedule (and which land the Borough Council confirms is referred to as the "Wider Project Site" in the GDA);

2.3 Reporting

- 2.3.1 The Owner will provide the Borough Council with the Monitoring and Progress Report in accordance with Paragraph 9 to the Standard Terms and Conditions at Part 3 of this Schedule and the Assurance Framework.
- 2.3.2 It is acknowledged and agreed that where development has not begun on the Project Site, the Owner shall submit the Monitoring and Progress Reports in accordance with Paragraph 9 to the Standard Terms and Conditions at Part 3 of this Schedule but that a nil response to certain parts of the Monitoring and Progress Report(s) may be provided.

2.4 Communications

- 2.4.1 Notwithstanding the provisions of Clause 17 (Service of Notices) in the main body of this Deed, the contact(s) for all enquiries in relation to this Schedule to this Deed at:
- (a) the Borough Council Authority are Lisa Evans (Special Projects Team Leader) and Rosalynn Claxton (Special Projects Team Leader) or such other individuals as the Borough Council may specify by notice; and
 - (b) the Owner are C/O Birketts Solicitors Providence House, 141-145 Princes St, Ipswich IP1 1QJ Ref no CG/314538.2.

All correspondence between the Parties must be in writing and either be delivered at or sent by first class post to the address on page 1 of this Deed in the case of the Borough Council or the address at (b) above in respect of the Owner.

- 2.4.2 In relation to service of notice under Clause 2.4.1 ~~Error! Reference source not found.~~ only, service of notice shall be by way of email to the following email addresses:
- (a) Lisa.Evans@ipswich.gov.uk and Rosalynn.Claxton@ipswich.gov.uk for the Borough Council or such other individuals as the Borough Council may specify by notice; and
 - (b) chloe-glason@Birketts.co.uk with a copy to tom-newcombe@Birketts.co.uk for the Owner or such other individuals as the Borough Council may specify by notice

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and such notice shall be accepted as having been received on the day of delivery save where the notice is not delivered on a Business Day and in which case the notice shall be accepted as having been received on the first Business Day after delivery.

2.4.3 Any notice or other communications between us shall be accepted as having been received:

- (a) if sent by first class post, three Business Days after posting exclusive of the day of posting; or
- (b) if delivered by hand, on the day of delivery save where the notice is not delivered on a Business Day and in which case the notice shall be accepted as having been received on the first Business Day after delivery.

Either of the Borough Council or the Owner may change the details of service by notice in accordance with the above.

2.5 **Amendments to this Schedule**

In the event the provisions of this Schedule 12 require amendment(s) to reflect any variations to the GDA the Owner shall not refuse to enter into a Deed of Variation save to the extent that the variations materially alter the liabilities of the Owner as set out within this Schedule

PART 2

PROJECT SPECIFIC DEFINITIONS

The following terms shall have the following meanings when used in this Schedule (unless the context requires otherwise).

Actual Project Completion Date	the date by which the Project is actually completed and a practical completion certificate has been issued (which may include any snagging items).
Affordable Housing	means any low cost subsidised housing available to people whose incomes generally deny them the opportunity to rent or purchase dwellings on the open market or similar community or social housing or shall bear such other meaning as may be defined in this Deed or subsequent agreement made pursuant to a Planning Agreement relating to the Project Site.
Assurance Framework	means the assurance framework for the Housing Infrastructure Fund – Marginal Viability Funding provided by Homes England to the Borough Council on 7 November 2018, as set out in Appendix 4 (Assurance Framework) to this Schedule.
Borough Council Senior Officer	means the employee of the Borough Council holding the title of 'Section 151 Officer' or any such other person with equivalent seniority notified to Homes England by the Borough Council
Disposal	means a transfer, disposal or grant of any legal or equitable interest in or over the Project Site or part thereof (other than (in relation to any land assets) by way of grant of a legal charge or the grant of a licence not creating exclusive possession terminable on 3 months' notice or less) including by way of lease
Market Value	<p>means in relation to the Project Site or any part or parts thereof (including in each case the works (or the relevant part thereof) thereon) the Market Value as defined in the Practice Statement Number PS 3.2 of the RICS Appraisal and Valuation Standards 6th Edition as varied from time to time BUT (in addition to the assumptions mentioned in that definition) on the following further assumptions in relation to the Project Site (or relevant part or parts of it:</p> <ul style="list-style-type: none"> a) the Disposal is subject to and with the benefit of any subsisting leases which are Permitted Disposals or agreements for the same but otherwise sold with vacant possession free from all charges and other encumbrances; b) all necessary consents for any works have been obtained and the same can be lawfully used; c) any damage caused by any insurable risk has been made good; d) it has the benefit of all easements and rights necessary for the beneficial use and occupation of it; and

	<p>e) which complies with:</p> <ul style="list-style-type: none"> i. the Borough Council's obligations to obtain Market Value under the Local Government Act 1972; and ii. State Aid Law (as defined under Paragraph 8 of Part 3 of this Schedule.)
Other Developer	means any other landowner or developer bringing forward the development of the Wider Project (excluding the Project) on the Wider Project Site (excluding the Project Site) and references to "Other Developers" shall be construed accordingly;
Other Developer Agreement	means any relevant extract of an agreement or a standalone agreement (whether in the form of a Planning Agreement or otherwise) entered into by the Borough Council and any Other Developer (which contains terms in materially the same form as this Schedule) to enable Other Developers to take responsibility for their share of the Borough Council's obligations and liabilities under the GDA in relation to the Wider Project (excluding the Project) on the Wider Project Site (excluding the Project Site) and references to "Other Developer Agreements" shall be construed accordingly;
Planning Agreement	means in relation to the Project (which includes a development for residential purposes) any agreement or other instrument binding the Project 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
Receipts	<p>means the aggregate of all proceeds or other receipts of the Owner in relation to the Project including but not limited to:-</p> <ul style="list-style-type: none"> (a) all rents, licence fees and other income or sums received or receivable following any Disposal of any part of the Project Site; and (b) all proceeds received or receivable or the amount or value of all consideration received or receivable from any Disposal of any part of the Project Site; (c) the proceeds of any insurance policy; (d) interest (if any) accruing on any items listed at (a) to (c) above, <p>but excluding Funding.</p>