

**DATED 18 DECEMBER 2023**

- (1) RUGBY BOROUGH COUNCIL
- (2) WARWICKSHIRE COUNTY COUNCIL
- (3) BRANDON ESTATES LIMITED
- (4) ANTHONY JOHN COPELAND

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**PLANNING OBLIGATION BY DEED OF  
AGREEMENT UNDER SECTION 106 OF THE  
TOWN AND COUNTRY PLANNING ACT 1990  
relating to  
Coventry Stadium, Rugby Road, Coventry  
Planning reference: R18/0186**

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SIGNATURE PAGE(S)

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THIS DEED is made on

2023

**BETWEEN:**

- (1) **RUGBY BOROUGH COUNCIL** of Town Hall, Evreux Way, Rugby CV21 2RR (the "**Council**"); and
- (2) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall, Market Place, Warwick CV34 4RL (the "**County Council**"); and
- (3) **BRANDON ESTATES LIMITED** (incorporated in Jersey) of Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT (the "**Owner**"); and
- (4) **ANTHONY JOHN COPELAND** of Druids Farm, Druids Lane, Birmingham B14 5SU (the "**Mortgagee**")

**RECITALS:**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) The County Council is the local highway authority and the local authority for statutory age education and pre-school age education and childcare for the area in which the Site is situated.
- (C) The Owner submitted the Application to the Council for the Development and on 16 November 2022 the Council resolved to refuse to grant the Planning Permission. The Owner has submitted the Appeal against the refusal of the Planning Permission for the Development and this Deed is to be considered as part of the Appeal.
- (D) The Owner is the freehold owner of the Site registered with the Land Registry under title number WK405562.
- (E) The Mortgagee is the registered proprietor of a legal charge dated 13 November 2018 affecting the Site and enters into this Deed to consent to its terms.
- (F) The Council considers it expedient if the Appeal is allowed that in the interests of the proper planning of its area that provision should be made for regulating or facilitating the Development as set out in this Deed.
- (G) For the purposes of Regulation 122 of the CIL Regulations and the Appeal the Council and the County Council are satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, that they are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.

**IT IS AGREED** as follows:

**OPERATIVE PROVISIONS**

**1. DEFINITIONS**

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

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

**"Appeal"** means the appeal submitted by the Owner to the Secretary of State for Levelling Up, Housing and Communities pursuant to the section 78 of the 1990 Act against the refusal of the Application and which has been allocated reference number APP/E3715/W/23/3322013

<b>"Application"</b>	means the application for outline planning permission for the Development validated by the Council and allocated reference number R18/0186
<b>"CIL Regulations"</b>	means the Community Infrastructure Levy Regulations 2010 or their statutory successor
<b>"Commencement of Development"</b>	<p>means to begin the Development by carrying out a material operation as defined in section 56(4) of the 1990 Act other than (for the purposes of this Deed and for no other purpose) operations consisting of:</p> <ul style="list-style-type: none"> <li>(a) site clearance;</li> <li>(b) ground investigations;</li> <li>(c) site survey works;</li> <li>(d) temporary Site access construction works;</li> <li>(e) archaeological investigation; and</li> <li>(f) erection of any temporary fences and hoardings around the Site</li> </ul> <p>and the terms <b>"Commencement"</b> and <b>"Commenced"</b> and <b>"Commence Development"</b> and <b>"Commencement Date"</b> are to be construed accordingly</p>
<b>"Contributions"</b>	means any financial contributions due to be paid to the Council or the County Council pursuant to this Deed
<b>"Contribution Contract"</b>	means an agreement or arrangement to be put in place by the Council or the County Council (as applicable) and the relevant third party which shall include a requirement for the relevant Contribution to only be used by the third party for the purpose as specified in this Deed
<b>"Deed"</b>	means this Deed made under section 106 of the 1990 Act and all other enabling powers
<b>"Development"</b>	means the development of the Site pursuant to the Planning Permission for the demolition of existing buildings and residential development as more particularly set out in the Application
<b>"Dwellings"</b>	means both the Affordable Dwellings and the Market Dwellings (as defined in Schedule 1) and reference to <b>"Dwelling"</b> shall be construed accordingly
<b>"Expert"</b>	means an independent person of at least 10 years' standing in the area of expertise relevant to the dispute to be agreed between the parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society
<b>"Index"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in relation to the University Hospitals Coventry and Warwickshire NHS Trust Contribution, the</li> </ul>

CCG Contribution, Management Company Forward Funding Sum, Management Company Maintenance Default Sum and the commuted sum to be paid pursuant to Schedule 3 paragraph 3 payable to the Council and the Road Safety Contribution payable to the County Council the All Items Index of Retail Prices published by the Office of National Statistics (or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation notified in writing to the Owner by the Council or the County Council (as applicable)

- (b) in relation to the PROW Contribution and the Traffic Calming Contribution to be made to the County Council, the Baxter Index which is the Department of Transport Local Government and the Regions Monthly Bulletin of Indices-Civil Engineering Formula 1990 Series to be weighed in the proportions Labour and Supervision 25% Plant and Road Vehicles 25% Aggregate 30% and Coated Macadam and Bitumen Products 20% (or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation notified in writing to the Owner by the County Council; and
- (c) in relation to the Education Contribution to be payable to the County Council the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors or by any other successor organisation) or (if the index is rebased) the rebased index applied in a fair and reasonable manner to the periods before and after rebasing under this Deed or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation notified in writing to the Owner by the County Council.

<b>"Index Linked"</b>	means subject to the indexation provisions in Clause 13.
<b>"Inspector"</b>	means the Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities
<b>"Interest"</b>	means interest at 4% above the base lending rate of Lloyds Bank plc from time to time
<b>"National Planning Policy Framework"</b>	means the government's planning policies for England first published on 27 March 2012 and updated on 24 July 2018, 19 February 2019 and 20 July 2021 as may be further updated from time to time

<b>"Occupation"</b>	means beneficial occupation of any part of the Development for the purposes permitted by the Planning Permission and this Deed other than occupation for the purposes of fitting-out and marketing and "Occupier" and "Occupied" shall be construed accordingly
<b>"Plan"</b>	means the plan attached to this Deed entitled "Site Boundary Plan" with reference 27510-9000-Rev B
<b>"Planning Permission"</b>	means the outline planning permission subject to conditions to be determined as part of the Appeal
<b>"Reserved Matters Application"</b>	means an application to the Council for approval of reserved matters for the Development
<b>"Reserved Matters Approval"</b>	means approval of a Reserved Matters Application by the Council
<b>"Residential Phase"</b>	means any phase of Development pursuant to a Reserved Matters Approval which contains Dwellings
<b>"Site"</b>	means the land against which this Deed may be enforced as at the date of this Deed comprised in Land Registry Title WK405562 as shown edged red on the Plan (but excluding highway)
<b>"Utilities"</b>	means mains services including gas, electricity, potable water, telecommunications and ducting to facilitate high speed broadband
<b>"Working Day"</b>	means a day other than a Saturday or Sunday or public holiday in England and any other day the Council or County Council offices are not open

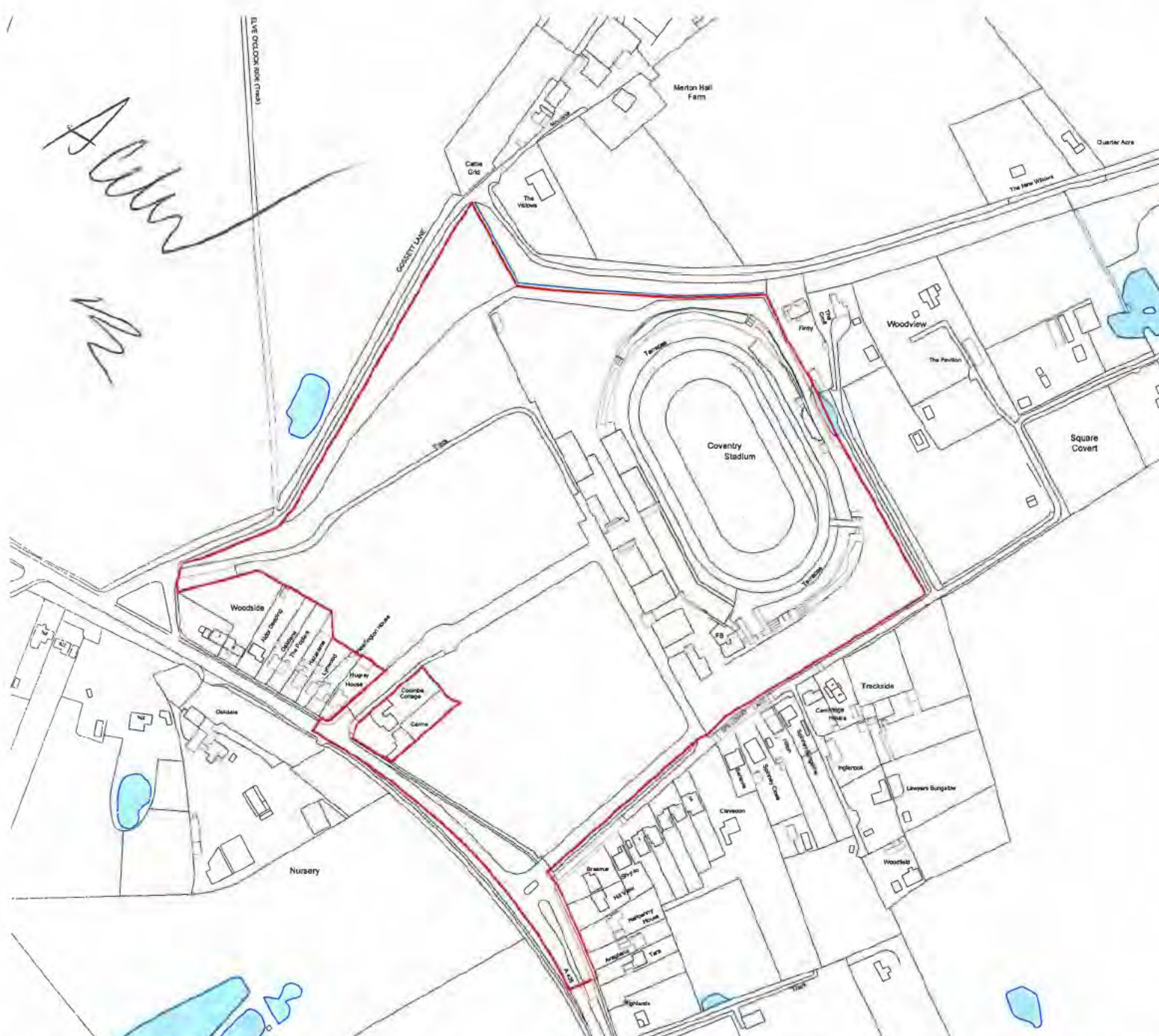
## 2. INTERPRETATION

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

- 2.1.1 recital, clause, sub-clause, paragraph number, schedule, appendix or plan is a reference to a recital, clause or sub-clause of, paragraph number of, schedule to, appendix to or plan annexed to this Deed;
- 2.1.2 words importing the singular meaning include the plural meaning and vice versa;
- 2.1.3 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner; and
- 2.1.4 Act of Parliament shall include any amendment, modification, extension, consolidation or re-enactment of that Act for the time being in force and in each case shall include all statutory instruments, orders, regulations and directions for the time being made, issued or given under that Act or deriving validity from it.

2.2 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Deed.


2.3 Any notice, notification, consent, approval, agreement, request or statement or details to be made, given or submitted under or in connection with this Deed shall be made or confirmed in writing.



The scaling of this drawing cannot be assured

Revision	Date	Drn	Ckd
A	Area for proposed vis-splays included 08.12.17	EB	CDB
B	Site boundary amended to exclude area of title WK435244	PT	EB

**LEGEND**

 Site Boundary 10.86 Ha



Project  
**Brandon Stadium  
 Coventry**  
 Drawing Title  
**Site Boundary Plan**

Date	Scale	Drawn by	Check by
03.05.17	1:2500 @ A3	KU	CdB
Project No	Drawing No		Revision
27510	9000		B



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- 2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 2.5 A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 2.6 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.7 Each of the parties to this Deed shall act in good faith and shall co-operate with each of the other parties to facilitate the discharge and performance of all obligations on them contained in this Deed and the Owner shall comply with any reasonable requests of the Council or the County Council to provide documentation within its possession (such documentation to be provided by the Owner at its own expense) for the purposes of monitoring compliance with the obligations contained in this Deed.
- 2.8 Any approval, consent, direction, authority, agreement or action to be given by the Council or the County Council under this Deed, acting reasonably, shall not be unreasonably withheld or delayed.

### 3. **LEGAL BASIS**

- 3.1 The covenants, obligations and restrictions in this Deed:
- 3.1.1 are, to the extent they are lawfully able to be so made, made under section 106 of the 1990 Act with the intention that they should bind the Owner's legal and equitable interest in the Site as provided by that section and are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and the County Council where applicable and the parties agree that such obligations meet the requirements of Regulation 122 of the CIL Regulations; and
- 3.1.2 are otherwise made pursuant to other enabling powers including section 278 of the Highways Act 1980 Act, sections 111, 120 and 139 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other statutory and enabling powers in which case these obligations are covenants given by deed and are enforceable as such by the Council and the County Council where applicable.
- 3.2 The covenants, obligations and restrictions on the part of the Owner in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and so bind the Owner's interest in the Site.
- 3.3 Subject to Clause 9, the obligations, covenants and undertakings on the part of the Owner are entered into with the intent that they are enforceable not only against the Owner but also against any successors in title or assigns of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it.
- 3.4 So far as the obligations, covenants and undertakings in this Deed are given by or to the Council or the County Council, they are entered into under the relevant powers referred to in Clause 3.1 and those obligations, covenants and undertakings are enforceable by or against the Council or the County Council.
- 3.5 If the Inspector, in his decision letter for the Appeal, concludes that any planning obligations, covenants and undertakings on the part of the Owner are not compatible with any one of the criteria for planning obligations in Regulation 122 and/or 123 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to them then such planning obligations, covenants and undertakings shall be of no effect and shall not be enforceable by the Council or the County Council and the Owner shall be under no obligation to comply with them **SAVE THAT** the remainder of this Deed shall continue in full force and effect.

- 3.6 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their statutory powers, duties, functions or discretions in relation to the Site or otherwise.

**4. CONDITIONAL ENTRY INTO FORCE**

This Deed is conditional upon the Commencement of Development save for the provisions of Clauses 1, 2, 3, 4, 5, 9, 10.1, 10.2, 10.6, 11, 12, 16, 17, 18, 19, 20 and 21 which shall come into effect immediately upon completion of this Deed.

**5. DURATION**

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

5.1.1 is quashed, revoked or otherwise withdrawn at any time so as to render this Deed or any part of it irrelevant, impractical or unviable; or

5.1.2 is modified by any statutory procedure without the consent of the Owner and the Council; or

5.1.3 expires before Commencement.

- 5.2 Where this Deed ends the Council shall forthwith remove all or procure removal of entries made in the Register of Local Land Charges in respect of this Deed.

**6. THE OWNER'S COVENANTS**

The Owner covenants with the Council and the County Council as set out in Schedule 1 to Schedule 5 inclusive of this Deed.

**7. THE COUNCIL'S COVENANTS**

The Council covenants with the Owner as set out in Schedule 6 and as may be elsewhere expressed as a Council covenant in Schedules 1 - 5.

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

The County Council covenants with the Owner as set out in Schedule 7 and as may be elsewhere expressed as a County Council covenant in Schedules 1 - 5.

**9. SUCCESSORS IN TITLE AND RELEASE**

- 9.1 References in this Deed to the Council and the County Council include the successors to its statutory functions.

- 9.2 Subject to Clauses 9.3 and 9.4, references to the Owner or any other person include its heirs, assigns, successors in title and persons deriving title through or under them.

- 9.3 The obligations in this Deed are not binding on or enforceable against:

9.3.1 individual owners, occupiers or tenants of Dwellings constructed pursuant to the Planning Permission or their mortgagees or chargees or those deriving title from them **SAVE THAT** the restrictions on Occupation, marketing and disposal of Affordable Housing in Schedule 1 shall bind the owners, occupiers and tenants of Affordable Dwellings as well as Chargees in the manner and to the extent provided in Schedule 1;

9.3.2 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of supplying Utilities or public transport services.

- 9.4 Subject to Clause 9.5 below, if the Owner or any person disposes of its entire interest in the Site or in any part of it, that Owner or person will be released from its obligations in this Deed which will no

longer be enforceable against that Owner or person in relation to the Site or that part of the Site disposed of, except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar PROVIDED THAT the person has fully complied with Clause 12 prior to disposing of its interest.

9.5 The release of the Owner or any person under Clause 9.4 is without prejudice to any subsisting liability for any antecedent breach or antecedent failure to comply with its obligations arising before parting with that interest.

9.6 Nothing in this Deed will prevent compliance with any obligation under it before that obligation comes into effect and early compliance will not amount to a waiver of the effect of this Clause 9.

## 10. MISCELLANEOUS

10.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

10.2 This Deed shall be registrable as a local land charge by the Council.

10.3 The Council shall cancel all entries made in the Register of Local Land Charges relating to this Deed after all obligations under this Deed have been satisfied.

10.4 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's and County Council's reasonable and proper costs) the Council or the County Council will issue a written confirmation of such performance or discharge.

10.5 In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the 1990 Act to carry out the Development otherwise than in accordance with the conditions attached to the Planning Permission (and for no other purpose whatsoever) references in this Deed to the Application, Development and Planning Permission shall be deemed to include any such subsequent planning applications, development and planning permissions as authorised pursuant to section 73 of the 1990 Act and this Deed shall henceforth take effect and be read and construed accordingly unless the Council confirms that this Clause shall not apply and a further deed is required to bind the new permission by the terms of this Deed and/or to modify the obligations secured by this Deed.

10.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

10.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

## 11. WAIVER

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

## 12. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council and County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the

obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan but for the avoidance of doubt transfers of individual Dwellings to individual owners/occupiers will not require the service of such a notice.

**13. INDEXATION**

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

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

where:

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

**B** = Index at the date the relevant sum is paid

**C** = Index at the date of this Deed

**D** = the resultant sum in pounds sterling payable under this Deed

and, for the avoidance of doubt, if D is less than A, then the net movement in the Index over the relevant period shall be deemed to be nil.

**14. INTEREST**

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

**15. VAT**

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

15.2 If any VAT is at any time chargeable on any supply made by the Council, the County Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

**16. DISPUTE PROVISIONS**

16.1 If a dispute between the parties persists beyond 10 Working Days and relates to any matter contained in this Deed (excluding any matter of law), the dispute may be referred to the Expert by any party to the dispute.

16.2 The Expert will act as an expert and not as an arbitrator.

16.3 Each party to the dispute will bear its own costs and the Expert's costs will be paid as determined by him or in the event of failure to determine, equally by parties to the dispute.

16.4 The Expert will be required to give notice to each of the parties, inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to the parties to the dispute an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material.

16.5 The Expert will be appointed subject to an express requirement that he must reach his decision and communicate it to the parties within the minimum practical timescale allowing for the nature

and complexity of the dispute, and in any event not more than 20 Working Days from the date of his appointment to act.

16.6 The Expert's decision will be given in writing with reasons and in the absence of manifest error or fraud will be binding on the parties

## 17. LEGAL COSTS AND MONITORING FEES

17.1 On completion of this Deed the Owner shall pay:

17.1.1 to the Council, the reasonable legal costs incurred by the Council in the negotiation, preparation and execution of this Deed.

17.1.2 to the County Council, the reasonable legal costs incurred by the County Council in the negotiation, preparation and execution of this Deed.

17.2 Prior to Commencement of Development the Owner shall pay to the Council:

17.2.1 £550 towards monitoring the Affordable Housing obligations in Schedule 1;

17.2.2 £550 towards monitoring the Contribution payable to the Council; and

17.2.3 £550 towards monitoring the Open Space obligations in Schedule 2.

17.3 Prior to the Commencement of Development, the Owner shall pay to the County Council the sum of £1,100.00 (one thousand and one hundred pounds) for the purpose of monitoring and supervising compliance with the County Council's obligations contained in this Deed.

## 18. NOTICES

18.1 The Owner will notify the Council and the County Council:

18.1.1 Upon Commencement of Development;

18.1.2 Upon Commencement on each Residential Phase;

18.1.3 Upon Occupation of the 1<sup>st</sup> Dwelling

18.2 Any notice or other written communication to be served on a party or given by one party to any other under the provisions of this Deed will be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the party on whom it is to be served or to whom it is to be given and will conclusively be deemed to have been received on:

18.2.1 if delivered by hand, the next Working Day after the day of delivery;

18.2.2 if sent by post, the day 2 Working Days after the date of posting;

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

18.2.4 if sent by email, by noon on the day following the date on the email.

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 The address for any notice or other written communication shall be within the United Kingdom.

18.5 Where proceedings have been issued in the Courts of England the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

- 18.6 A notice or communication will be served or given:
- 18.6.1 on the Owner at the address above marked for the attention of the Owner or such other address as notified in writing to the Council and the County Council from time to time;
  - 18.6.2 on the Council at Town Hall, Evreux Way, Rugby, CV21 2RR or such other address notified in writing to the Owner from time to time, marked for the attention of the **Chief Officer for Growth and Investment** and if sent by email emailed to [RBC.Planning@rugby.gov.uk](mailto:RBC.Planning@rugby.gov.uk) also marked for the attention of the **Chief Officer for Growth and Investment**; and
  - 18.6.3 on the County Council at Shire Hall, Warwick, Warwickshire CV34 4RL or such other address notified in writing to the Owner from time to time, marked for the attention of the **Infrastructure Delivery Manager**.
- 18.7 Any notice or other written communication to be given by the Council or County Council will be deemed valid and effectual if on its face it is signed on behalf of the Council or the County Council by an officer or duly authorised signatory.

19. **MORTGAGEE'S CONSENT**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

20. **JURISDICTION**

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

21. **DELIVERY**

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

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

## Schedule 1

### AFFORDABLE HOUSING

#### 1. DEFINITIONS

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

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

estimates of the following costs: rent, service charges and/or estate rent charges and/or any other charges that may be imposed by the Owner on tenants of each Social Rent Dwelling and Affordable Rent Dwelling on first Occupation of such dwelling **PROVIDED THAT** the Owner shall use reasonable endeavours to ensure that any such service, estate rent or other charges are minimised and where possible shall work with any relevant Affordable Housing Provider that is a party to an Affordable Housing Agreement to seek to ensure the same;

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

**"Affordable Housing Tenure Mix"**

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

**"Affordable Rent Dwellings"**

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

**"Assured Tenancy"**

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

**"Chargee"**

means any mortgagee or chargee or any receiver or manager (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any other security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Dwellings and for the avoidance of doubt also includes any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide Shari'ah compliant finance for the purpose of acquiring an Affordable Dwelling.



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

- (a) definition of Qualifying Purchaser;
- (b) marketing protocol for the initial disposal of the Discount Market Dwellings targeted at Qualifying Purchasers and for the Minimum Time Frame applicable to initial sales;
- (c) the Title Restriction and any other restrictions and covenants to be included in any agreement for sale and transfer of a Discount Market Dwelling to ensure it remains a Discount Market Dwelling in perpetuity (subject to the procedure for release benefiting Chargees as set out at paragraph 6.15 of this Schedule and exemptions set out at paragraph 6.15 of this Schedule).

**"Discount Market Dwellings"** means Affordable Dwellings to be sold on a freehold basis to a Qualifying Purchaser at the Maximum Price in accordance with (for initial sales) the Discount Market Dwelling Scheme and (for subsequent sales) the Advertising Scheme (if any).

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

**TOTAL NUMBER OF AFFORDABLE DWELLINGS REQUIRED**

MULTIPLIED BY

**BUILD COST OF THE REQUIRED DWELLINGS**

PLUS

**LAND COST**

MINUS

**THE AMOUNT EQUIVALENT TO THAT WHICH WOULD BE PAYABLE BY A REGISTERED PROVIDER**

EQUALS

**THE SUM PAYABLE**

**Where:**

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

**Land costs** are based on the most up to date

information as at the date of the calculation of the Fallback AH Contribution

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

**"Household"**

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

**"Initial Disposals"**

means first disposals following Practical Completion of the Affordable Dwellings.

**"Intermediate Dwellings"**

means:

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

each as first approved in writing by the Council.

**"Market Dwellings"**

means those Dwellings which are not Affordable Dwellings

**"Market Value"**

means the best price that might reasonably be expected for the freehold or (where applicable) long leasehold of a Dwelling of the relevant type from a private purchaser assuming that it was a Market Dwelling calculated in accordance with the RICS Manual of Valuation Practice (Red Book) current at the time of valuation, expressed as a value per square metre, calculated (in the case of Initial Disposals) on the average price based on the valuations undertaken by three valuers independent to the party that seeks to establish the Market Value and copies of the three valuations shall be provided in writing to the Council when the party seeks to establish the Market Value **SAVE THAT** the Council is permitted to seek a revaluation based on the Council's choice of market comparables, in the event the three valuations supplied to the Council are more than 10% apart from one another **AND FURTHER SAVE THAT** on Subsequent Disposals two valuations will be sufficient for the purposes of establishing Market Value

**"Maximum Price"**

means unless otherwise agreed by the Council in its absolute discretion in writing, a price which shall not exceed 75% of the Market Value of the Discount

Market Dwelling as at the date of the final valuations provided to the Council to evidence Market Value.

**"Minimum Timeframe"**

means:

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

**"Private Intermediate Dwelling"**

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

**"Qualifying Purchaser"**

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

**"Regulator for Social Housing"**

means an executive non-departmental public body, sponsored by the Department for Levelling Up, Housing and Communities, set up to promote a viable, efficient and well-governed social housing sector able to deliver and maintain homes of appropriate quality that meet a range of needs.

**"Serviced"**

means the provision of vehicular and pedestrian access, Utilities and foul and surface water drainage to the boundary of the relevant land in order that the users of the relevant land can connect into these services.

**"Shared Ownership Dwellings"**

means Affordable Dwellings in which the occupiers own an initial percentage of the Affordable Dwelling being less than 75% and the remainder is owned by an Affordable Housing Provider but with the right for the occupier to purchase further percentages of the Affordable Dwelling up to 100% subject to any housing or other legislation from time to time which provides to the contrary and as at the date of this Deed the Parties acknowledge and agree that the Parish of Brandon & Bretford is a Designated Protected Area under Schedule 1, Part 4 of the Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2000 where statutory staircasing restrictions apply.

**"Social Rent Dwellings"**

means Affordable Dwellings to be offered and occupied via an Affordable Housing Provider pursuant

to an Assured Tenancy in respect of which rents (including service charges) are determined in accordance with the rent standard in "The Regulatory Framework for Social Housing in England, April 2015" published by the Regulator of Social Housing (as may be updated or replaced from time to time) and in accordance with Annex 2 of the National Planning Policy Framework and which shall be offered for rent by an Affordable Housing Provider to persons who are otherwise unable to secure private sector housing for purchase or rent in the prevailing economic circumstances and who have in the opinion of the Council need for such housing and "Social Renting" shall be construed accordingly.

**"Subsequent Disposals"**

means disposals other than Initial Disposals, by individual owners/occupiers of the Affordable Dwellings

**"Tenure Blind"**

means in relation to the Affordable Dwellings indistinguishable from Market Dwellings in terms of design, external appearance and quality of materials.

**"Title Restriction"**

means a title restriction to be entered into the Land Registry Proprietorship Register of any Discount Market Dwelling in the following terms (subject to any amendments thereto required by the Land Registry and agreed by the Owner or the owner of the Discount Market Dwelling from time to time and the Council):

*"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by Rugby Borough Council's Legal Services that the provisions of paragraphs [ ] of the Schedule to the Section 106 Agreement dated [ ] containing planning obligations relating to land at [Coventry Stadium, Rugby Road, Coventry] have been complied with or are not relevant to the disposition".*

**2. AFFORDABLE HOUSING SCHEME**

**2.1 The Owner covenants with the Council:**

- 2.1.1 prior to the Commencement of Development pursuant to any Reserved Matters Approval to submit in writing to the Council the Affordable Housing Scheme for the Council's approval; and
- 2.1.2 not to Commence Development on any Reserved Matters Area until the Affordable Housing Scheme for that Reserved Matters Area has been approved in writing by the Council.

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

### 3. PROVISION OF AFFORDABLE HOUSING

#### 3.1 The Owner covenants with the Council:

3.1.1 to provide or procure the provision of 20% (twenty per cent) of the Dwellings across the Development as Affordable Dwellings;

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

- (a) Serviced;
- (b) in accordance with the Affordable Housing Tenure Mix set out in paragraph 4.1 below (save where a revised Affordable Housing Tenure Mix has been approved pursuant to the provisions of paragraph 4.2 below);
- (c) in accordance with the latest approved Affordable Housing Scheme;
- (d) Tenure Blind; and
- (e) in respect of the Social Rented Dwellings or any other rented Affordable Dwellings to be managed by an Affordable Housing Provider and approved by the Council under this Schedule:
  - (i) pursuant to a choice based local lettings scheme arrangement required by the Council and/or a nomination agreement with the Council on the following terms:
    - (1) the Affordable Housing Provider's standard terms (unless a local letting scheme is required by the Council);
    - (2) unless otherwise agreed in writing between the Affordable Housing Provider and the Council, the Council will retain 100% of the first nomination rights and 75% of the subsequent nomination rights
- (f) that no Social Rent Dwelling or other rented Affordable Dwelling managed by an Affordable Housing Provider and approved by the Council under this Schedule shall be Occupied unless and until a nomination agreement and/or choice based local lettings scheme arrangement (as applicable) has been entered into in relation to the relevant Affordable Dwelling.

### 4. AFFORDABLE HOUSING TENURE MIX

4.1 The Affordable Housing Tenure Mix shall, save as where provided otherwise in this Schedule, be as follows:

4.1.1 56% of the Affordable Dwellings are to be Social Rent Dwellings; and

4.1.2 44% of the Affordable Dwellings are to be Shared Ownership Dwellings.

4.2 The Owner shall be permitted to seek to amend the Affordable Housing Tenure Mix prior to Commencement of Development **SAVE THAT** in seeking to do so the Owner shall first submit such amendments to the Council for its approval, together with written reasons for the variation, and obtain the Council's written approval to such amendments before such amendments may be implemented.

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

**First Disposals**

5.1 The Owner shall in respect of first disposals of any Discount Market Dwellings:

5.1.1 not dispose of any Discount Market Dwellings until the Discount Market Dwelling Scheme has been approved by the Council in writing;

5.1.2 only dispose of the Discount Market Dwellings to Qualifying Purchasers and at the Maximum Price in accordance with the approved Discount Market Dwelling Scheme; and

5.1.3 market the Discount Market Dwellings in accordance with the marketing cascade set out in paragraph 6 below;

5.2 The Owner shall in respect of first disposals of any Private Intermediate Dwellings:

5.2.1 not dispose of the Private Intermediate Dwellings otherwise than in accordance with details approved as part of the Affordable Housing Scheme;

5.2.2 only dispose of the Private Intermediate Dwellings to Qualifying Purchasers and in accordance with details (including but not limited to sale price) approved as part of the Affordable Housing Scheme; and

5.2.3 market the Private Intermediate Dwellings in accordance with the marketing cascade set out in paragraph 6 below.

**Subsequent Disposals**

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

5.4 Subsequent disposals by individual owners of the Private Intermediate Dwellings shall not take place unless and until the Council has approved in writing the Market Value, sale price (which shall not in respect of Private Intermediate Dwellings for sale exceed 75% Market Value) and the Advertising Scheme for the relevant Private Intermediate Dwelling.

5.5 In the event that the individual owners of Discount Market Dwellings or Private Intermediate Dwellings are unable to complete a disposal to a Qualifying Purchaser in accordance with paragraphs 5.3 and 5.4 above (as applicable) within the Minimum Timeframe such Discount Market Dwellings or Private Intermediate Dwellings (as applicable) may be sold at the relevant discounted price specified in this Schedule and subject to the Title Restriction (or equivalent form of protection to ensure the discount is passed onto successors in title agreed pursuant to this Schedule) to any willing purchaser but at the time of any subsequent sale the provisions of this Schedule shall again apply and such purchaser shall remain bound by the terms of this Schedule.

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

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

6.1 No later than 6 (six) months from Commencement of Development on each Residential Phase (the "Longstop Date"), the Owner covenants with the Council to have used reasonable endeavours for a period of no less than 6 (six) months:

6.1.1 to market the Affordable Dwellings to be managed by an Affordable Housing Provider to at least 4 (four) Affordable Housing Providers (first approved in writing by the Council) and to enter into an Affordable Housing Agreement with one or more of such approved Affordable Housing Providers in respect of the same and forthwith upon such Affordable

Housing Agreement(s) having been entered into the Owner shall notify the Council of the identity of the Affordable Housing Provider(s) which is or are party to such Affordable Housing Agreement(s) together with details of the number, size, type, tenure and location of the Affordable Dwellings the subject of the Affordable Housing Agreement(s);

- 6.1.2 to market the Discount Market Dwellings (if any) in accordance with the approved Discount Market Dwelling Scheme and forthwith upon exchange of contracts with a Qualifying Purchaser in respect of such units, the Owner shall notify the Council of the property details, details of the Qualifying Purchaser and the Maximum Price;
- 6.1.3 to market the Private Intermediate Dwellings (if any) in accordance with the details approved as part of the Affordable Housing Scheme and forthwith upon exchange of contracts with a Qualifying Purchaser in respect of such units the Owner shall notify the Council of the property details, details of the Qualifying Purchaser and the final sale price.

#### **Revised Affordable Housing Tenure Mix**

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

- 6.2.1 where the reason for a lack of offers is identified as being the Affordable Housing Tenure Mix:
  - (a) the Owner may apply to the Council in writing to revise the Affordable Housing Tenure Mix for from that set out in paragraph 4.1 above and in doing so the Owner shall provide the Council with the following:
    - (i) written reasons for the variation from the original Affordable Housing Tenure Mix for approval;
    - (ii) in respect of the Affordable Dwellings to be managed by an Affordable Housing Provider, evidence that the Owner has used reasonable endeavours to market the said Affordable Dwellings to at least four Affordable Housing Providers (first approved in writing by the Council);
    - (iii) in respect of the Discount Market Dwellings (if any), evidence to show that the Owner has marketed the said Discount Market Dwellings in accordance with the approved Discount Market Dwelling Scheme; and
    - (iv) in respect of the Private Intermediate Dwellings (if any), evidence to show that the Owner has marketed the said Private Intermediate Dwellings in accordance with the details approved as part of the Affordable Housing Scheme;

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

- 6.3 If the Council approves the revised Affordable Housing Tenure Mix then the Owner shall use reasonable endeavours for a further period of 5 (five) months to enter into an Affordable Housing Agreement / exchange contracts with a Qualifying Purchaser on the basis of the revised approved Affordable Housing Tenure Mix and shall market:
  - 6.3.1 the Affordable Dwellings to be managed by an Affordable Housing Provider to at least 4 (four) Affordable Housing Providers (first approved in writing by the Council);
  - 6.3.2 the Discount Market Dwellings (if any) in accordance with the approved Discount Market Dwelling Scheme (as may be amended in accordance with paragraph 2.2 to reflect the revised Affordable Housing Tenure Mix); and

6.3.3 any Private Intermediate Dwelling (if any), in accordance with the details approved as part of the Affordable Housing Scheme (as may be amended in accordance with paragraph 2.2 to reflect the revised Affordable Housing Tenure Mix);

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

6.4.1 in respect of the Affordable Dwellings to be managed by an Affordable Housing Provider, the identity of either the Affordable Housing Provider(s) which is or are party to such Affordable Housing Agreement(s) together with details of the number, size, type and tenure of the Affordable Dwellings the subject of the Affordable Housing Agreement(s);

6.4.2 in respect of the Discount Market Dwellings (if any), and by completion of the Council's standard form if available, the property details, details of the Qualifying Purchaser and the Maximum Price; and

6.4.3 in respect of the Private Intermediate Dwellings (if any), the property details, details of the Qualifying Purchaser and final sale price (which shall not in Private Intermediate Dwellings for sale exceed 75% of the Market Value);

#### **Offer to the Council**

6.5 Where the reason for lack of offers is not the Affordable Housing Tenure Mix the provisions of paragraph 6.7 below shall apply;

6.6 In the event that the Owner re-markets the Affordable Dwellings in the circumstances referred to in paragraph 6.3 above but is not able to enter into an Affordable Housing Agreement / exchange contracts with a Qualifying Purchaser on the basis of an approved revised Affordable Housing Tenure Mix despite the Owner having used reasonable endeavours to do so for a further period of 5 (five) months then the provisions of paragraph 6.7 shall apply.

6.7 Where the provisions of paragraph 6.5 or 6.6 above apply:

6.7.1 the Owner shall provide written evidence to the Council to satisfy the Council that the Owner has in accordance with the provisions of paragraph 6.1 or 6.2.1 used reasonable endeavours to enter into an Affordable Housing Agreement(s) / exchange contracts with a Qualifying Purchaser, such information to include details of all offers received and marketing undertaken and:

(a) in respect of the Affordable Dwellings to be provided by an Affordable Housing Provider, evidence of negotiations with at least 4 (four) Affordable Housing Providers (previously approved in writing by the Council) and confirmation that the Owner has offered the relevant Affordable Dwellings to an Affordable Housing Provider at a consideration not exceeding 65% of Market Value for those Affordable Dwellings; and

(b) in respect of the Discount Market Dwellings (if any), evidence of marketing in accordance with the Discount Market Dwelling Scheme;

(c) in respect of the Private Intermediate Dwellings (if any) evidence of marketing in accordance with the details approved as part of the Affordable Housing Scheme;

6.7.2 if the Council (acting reasonably) confirms in writing setting out its reasons why it is not satisfied that the Owner has used reasonable endeavours to comply with the obligations set out in paragraph 6.1 or (as applicable) paragraph 6.2.1 above then the Owner shall be required to repeat the process set out in paragraph 6.1 or (as applicable) paragraph 6.2.1 above until such time as the Council is satisfied that the Owner has



discharged its obligations **PROVIDED THAT** if the Council has not confirmed its satisfaction within 3 (three) months from the date of its first confirmation pursuant to this paragraph 6.7.2 then the matter shall be referred to an Expert for determination pursuant to Clause 16 of this Deed;

- 6.7.3 in the event the Council in writing confirms its satisfaction that the Owner has discharged its obligations set out in paragraph 6.1 or (as applicable) paragraph 6.2.1 above then the Owner shall offer to transfer to the Council the freehold or leasehold interest in the relevant Affordable Dwellings together with the land on which the Affordable Dwellings will be constructed on the basis that:
- (a) the Owner shall construct the Affordable Dwellings prior to transfer of the completed Affordable Dwellings to the Council; and
  - (b) the Owner shall bear its own and the Council's legal costs in relation to any contracts and transfers associated with the Affordable Dwellings and the land on which they are constructed

#### **Fallback AH Contribution**

- 6.8 If either:
- 6.8.1 the offer to the Council made pursuant to 6.7.3 above is not accepted by the Council within 30 (thirty) Working Days of the offer being received by the Council in writing; or
  - 6.8.2 contracts have not been exchanged within 6 (six) months of acceptance of the offer by the Council then the Owner shall:
    - (i) be entitled to withdraw any outstanding offer or acceptance and/or withdraw from contractual negotiations (as applicable) with the Council in relation to the Affordable Dwellings; and
    - (ii) shall pay the Fallback AH Contribution to the Council in respect of the Affordable Dwellings that would otherwise have been provided.
- 6.9 On payment of the Fallback AH Contribution the Owner shall (in respect of the Affordable Dwellings that would otherwise have been provided):
- 6.9.1 be released from the provisions of this Schedule and shall be entitled to dispose of the relevant Affordable Dwellings on the open market; and
  - 6.9.2 be taken as having discharged the requirement to provide the relevant Affordable Dwellings by the payment of the Fallback AH Contribution;
- 6.10 where a Fallback AH Contribution is to be paid pursuant to paragraph 6.8.2(ii) above then not earlier than 40 forty Working Days prior to the anticipated date of the Occupation of 50% of the Market Dwellings the Owner shall submit to the Council in writing for approval details of what the Fallback AH Contribution should be together with written evidence and copies of an independent valuation used to establish Market Value justifying the calculation of the said Fallback AH Contribution.
- 6.11 If the Owner has entered into one or more Affordable Housing Agreements / exchanged contracts with a Qualifying Purchaser (as applicable) for the Affordable Housing within a Residential Phase and has provided written evidence of the same to the Council in accordance with paragraph 6.1 or 6.4 as applicable no more than 50% of the Market Dwellings shall be Occupied until such time as the Affordable Dwellings have been completed and transferred either to the relevant Affordable Housing Providers in accordance with the terms of the Affordable Housing Agreements or to Qualifying Purchasers in accordance with the Discount Market Dwelling Scheme or Affordable Housing Scheme (as applicable).

6.12 If the Owner has been unable to enter into any Affordable Housing Agreements in respect of the Affordable Dwellings to be managed by an Affordable Housing Provider within a Residential Phase or to exchange contracts with a Qualifying Purchaser in respect of any Intermediate Dwellings not being managed by an Affordable Housing Provider by the Longstop Date then no more than 70% of the Market Dwellings shall be Occupied until such time as one of the following has occurred:

6.12.1 all such Affordable Dwellings within have been constructed and completed such that they are capable of being Occupied and the Council has accepted an offer of the completed Affordable Dwellings made to it pursuant to paragraph 6.7.3; or

6.12.2 the Fallback AH Contribution has been paid to the Council.

#### **Occupation restrictions**

6.13 Subject to the exemptions and releases in paragraphs 6.14 to 6.16 below:

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

6.13.2 Social Rent Dwellings and Affordable Rent Dwellings (if any) shall not be used other than for Social Renting or Affordable Renting (as applicable);

6.13.3 Intermediate Dwellings to be managed by an Affordable Housing Provider (such as but not limited to Shared Ownership Dwellings) shall only be offered by the Affordable Housing Provider to each new occupier at a cost no more expensive than those approved by the Council in relation to the Intermediate Dwelling in question as part of the Affordable Housing Scheme (subject to provisions for staircasing applying to Shared Ownership Dwellings where appropriate) unless otherwise approved in writing by the Council;

6.13.4 Discount Market Dwellings (if any) shall not be Occupied other than by a Qualifying Purchaser as defined in the approved Discount Market Dwelling Scheme;

6.13.5 Private Intermediate Dwellings (if any) shall not be Occupied other than by a Qualifying Purchaser as defined in the approved Affordable Housing Scheme; and

6.13.6 Subletting of Affordable Dwellings is strictly prohibited without the Council's prior written consent (to be given in its absolute discretion);

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

#### **Mortgagee release**

6.14 The restrictions and requirements of paragraph 6.13 shall not be binding on a Chargee or a bona fide purchaser for value thereof from such a Chargee or any persons or bodies deriving title through such Chargee **PROVIDED THAT** the following procedure set out in paragraph 6.15 shall have been followed.

- 6.15 The Chargee shall first give written notice to the Council of its intention to dispose of the relevant Affordable Dwellings and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Affordable Housing Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses and if such disposal has not completed within the aforesaid 3 (three) month period the Chargee shall be entitled to dispose of the Affordable Dwellings free from the restrictions and requirements of paragraph 6.13 above which provisions shall determine absolutely in respect of such Affordable Dwellings.

#### **Exemptions**

- 6.16 The Owner covenants with the Council not to Occupy or permit to be Occupied the Affordable Dwellings otherwise than in strict accordance with the restrictions and requirements in paragraph 6.13 above **PROVIDED THAT** the provisions in paragraph 6.13 above will only be binding on the applicable Affordable Dwellings until such time as:
- 6.16.1 any chargee of an Affordable Dwelling or any part or parts thereof is in possession or has exercised a power of sale thereof as Chargee and the procedure in paragraph 6.15 has been followed;
  - 6.16.2 any chargee of a share of a Shared Ownership Dwelling subject to a lease on shared ownership terms (as defined in section 70(4) Housing and Regeneration Act 2008) has exercised its powers as Chargee under the lease;
  - 6.16.3 any Shared Ownership Dwelling owner has (where permitted under the terms of the lease) staircased to own 100% of any lease of an Affordable Dwelling; or
  - 6.16.4 an occupant of an Affordable Dwelling has exercised a statutory right to buy or acquire such Affordable Dwelling or has acquired such Affordable Dwelling pursuant to any voluntary purchase scheme approved by Homes England

then in each case the provisions in paragraph 6.13 above shall not bind or be enforceable and shall cease to have effect against such person or persons and against successors in title and any person or persons deriving title therefrom (except where the successor in title following the procedure in paragraph 6.15 above is an Affordable Housing Provider or the Council).

## Schedule 2

### OPEN SPACE




#### 1. DEFINITIONS

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

<b>"Completion Certificate"</b>	means a certificate of practical completion issued by the Council.
<b>"Final Certificate"</b>	means a certificate issued by the Council confirming that the Open Space Works to which the certificate relates have been maintained to its reasonable satisfaction during the Maintenance Period and any remedial works have been completed to the satisfaction of the Council.
<b>"LEAP"</b>	means the local equipped area for play to be provided within the Open Space Land in accordance with the approved Open Space Scheme.
<b>"Management Company"</b>	means an incorporated body; which has its principal office in England and whose primary objects permit it to maintain and manage the Open Space Works on the Open Space Land and any SUDS.
<b>"Management Scheme"</b>	means one or more schemes for the management and ongoing maintenance of the Open Space Works and SUDS setting out the standard of maintenance, how members of the public will have unrestricted access to the Open Space Land, management responsibilities and financial arrangements for securing such responsibilities for the lifetime of the Development, taking into account necessary rights and reservations, public adoption of highways and any services and any other rights reasonably required by the proposed Management Company to fulfil its functions and to include full details of the identity of the proposed Management Company and how it is to be constituted and funded.
<b>"Maintenance Period"</b>	means a period of 12 (twelve) months.
<b>"Open Space Land"</b>	means land to be provided within the Development for public open space to be provided in a location to be agreed in writing with the Council via the approved Open Space Scheme and which (for the avoidance of doubt) may incorporate LEAP and SUDS
<b>"Open Space Plan"</b>	means the plan appended to this deed marked Illustrative Landscape Masterplan POS Areas Plan reference BL-LD-03 Rev: A as may be amended from time to time
<b>"Open Space Provision"</b>	means the provision of public open space to be provided on the Open Space Land in accordance with the approved Open Space Scheme and to include the following quantities of the various typographies:



The scaling of this drawing cannot be assured  
 Revision: A  
 P&G Category: retained  
 Date: 08.08.23  
 Dm: LS  
 Cld: PC

- LEGEND
-  Children & Young People (EAP) 0.595Su
  -  Amenity Greenspace 3.1Btu
  -  Natural & Semi-Natural 3.1Btu

*R*  
 21/9/23



*Paul Fairweather*

*A. Cooley*



FIG 001  
 Project: Brandon Stadium  
 Coventry  
 Drawing Title: Illustrative Landscape Masterplan  
 POS Areas Plan  
 Date: 07.08.2023  
 Scale: 1:1,000 (CAL)  
 Project No: 333100212  
 Drawing No: BL-LD-03  
 Drawn by: LA  
 Checked by: RMCV  
 Revision: A

 **Stantec**  
 200 Water Street  
 Detroit, MI 48201  
 313.963.6000  
 www.stantec.com

- (a) Amenity greenspace (3.10. hectares);
- (b) Natural and semi-natural (1.8 hectares); and
- (c) Provision for children and young people (being the LEAP) (0.595 hectares)

UNLESS otherwise agreed in writing with the Council.

**"Open Space Scheme"**

means the scheme for the Open Space Land, substantially in accordance with the Open Space Plan, which for the avoidance of doubt shall be separate to any landscaping scheme or any other scheme required to be submitted in accordance with a planning condition attached to the Planning Permission and will include (amongst other details) details of the final location(s) of the Open Space Provision including the nature, size and location of the LEAP, SUDS boundary treatments and a proposed management and maintenance regime.

**"Open Space Transfer"**

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

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

above, shall provide that the Open Space Land shall not be used for any purpose other than for a publicly accessible area for general recreational use.

**"Open Space Works"**

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

**"RoSPA"**

means the Royal Society for the Prevention of Accidents.

**"SUDS"**

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

**2. OPEN SPACE SCHEME**

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

**3. LAYING OUT OF OPEN SPACE**

- 3.1 Prior to the Occupation of no more than 50% of the Dwellings in each Residential Phase, the Owner shall lay out, install and complete the Open Space Works in accordance with the approved Open Space Scheme
- 3.2 Following completion of the Open Space Works for each Residential Phase:
- 3.2.1 the Owner shall serve notice on the Council inviting it to inspect the Open Space Works and to issue a Completion Certificate confirming that such Open Space Works for the Relevant Residential Phase have been completed to the Council's reasonable satisfaction and in accordance with the approved Open Space Scheme;
- 3.2.2 if the Council inspects the Open Space Works and notifies the Owner in writing of necessary remedial works on the basis the Open Space Works as constructed do not accord with the approved Open Space Scheme, the Owner shall complete such remedial works to the reasonable satisfaction of the Council; and
- 3.2.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting it to inspect the remedial works identified by it pursuant to paragraph 3.2.2 above and to issue a Completion Certificate confirming that such works have been completed to the Council's reasonable satisfaction in accordance with the approved Open Space Scheme for the Relevant Residential Phase

**PROVIDED THAT**

- (i) the inspection procedure identified in paragraphs 3.2.1, 3.2.2 and 3.2.3 shall be repeated until such time as the Council issues a Completion Certificate in relation to the Open Space Works for the Relevant Residential Phase; and
- (ii) in respect of the LEAP and SUDS, the Owner will provide to the Council prior to the inspection required by paragraph 3.2 above a RoSPA post-installation report and risk assessment satisfactory to the Council.

3.3 In the event of a dispute as to whether remedial works identified by the Council are necessary, the dispute may be referred to an Expert in accordance with Clause 16 of this Deed.

3.4 On the expiration of the Maintenance Period:

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

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

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

**PROVIDED THAT**

(i) the inspection procedure identified in paragraphs 3.4.1 and 3.4.3 shall be repeated until such time as the Council issues a Final Certificate in relation to the Open Space Works; and

(ii) in respect of the LEAP and SUDS, the Owner will provide to the Council prior to the inspection required by paragraph 3.4 above a RoSPA post-installation report and risk assessment satisfactory to the Council.

3.5 The Owner shall:

3.5.1 maintain the Open Space Works in accordance with the approved Open Space Scheme until the Open Space Provision is transferred to the Council or to a Management Company pursuant to paragraph 4 below;

3.5.2 from the date the Completion Certificate is issued allow free unrestricted use of and access to the Open Space Provision for the general public at all times of the day and night; and

3.5.3 provide a satisfactory RoSPA report to the Council in respect of the LEAP annually unless and until the LEAP is transferred to the Council pursuant to paragraph 4 below.

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

**4. TRANSFER OF OPEN SPACE**

4.1 Prior to the issue of a Final Certificate for the Open Space Provision (or part thereof) the Owner shall offer in writing to transfer to the Open Space Provision (or the relevant part) to the Council

4.2 In the event the Council confirms in writing to the Owner that it wishes to accept the offer of the transfer of the Open Space Provision (or part thereof) made pursuant to paragraph 4.1 above and therefore the Open Space Provision (or the relevant part) is to be transferred to the Council, then:



- 4.2.1 the Owner and the Council shall use reasonable endeavours to agree the reasonable terms for the transfer of the Open Space Provision and to agree all of the provisions in detail of the Open Space Transfer within three months of the date of the notification by the Council to the Owner that it wishes to accept the offer of the transfer;
  - 4.2.2 on agreement of the form of the Open Space Transfer, the Owner shall deliver to the Council the Open Space Transfer executed by the Owner;
  - 4.2.3 on delivery of the executed Open Space Transfer by the Owner, the Council shall execute and complete the Open Space Transfer;
  - 4.2.4 the transfer will take place as soon as practicably possible after the Final Certificate has been issued in respect of the Open Space Provision; and
  - 4.2.5 the Owner shall on completion of such Open Space Transfer pay to the Council a commuted sum to be agreed prior to completion of the Open Space Transfer such commuted sum to be first calculated in accordance with the "Planning Obligations Supplementary Planning Document" (March 2012) published by the Council and then Index Linked in accordance with clause 13.
- 4.3 The Council is not in any event obliged to take a transfer of any Open Space Provision until a Final Certificate for such Open Space Provision has been issued
- 4.4 If the Council confirms in writing to the Owner that it does not wish to accept the offer to transfer the Open Space Provision made by the Owner pursuant to paragraph 4.1 above or where the Council has failed to respond to the Owner's offer pursuant to paragraph 4.1 above, after the expiry of 3 (three) months of the date of the Owner's offer pursuant to paragraph 4.1 or the issue of the Final Certificate (whichever is the later)), the Owner shall:
- 4.4.1 submit a Management Scheme for the Open Space Provision to be transferred to the Management Company to the Council for its approval;
  - 4.4.2 upon receipt of the Council's written approval of the Management Scheme for the Open Space Provision to be transferred to the Management Company, put into effect the approved Management Scheme to secure the future maintenance of the Open Space Provision;
  - 4.4.3 make arrangements in the transfer (or other appropriate arrangements) of the Dwellings comprised in the Relevant Residential Phase for the Management Company to receive adequate funding for the ongoing management maintenance of the Open Space Provision in accordance with the approved Management Scheme; and
  - 4.4.4 ensure that it has received written approval from the Council of the Management Scheme for the Open Space Provision to be transferred to the Management Company and a Final Certificate for the Open Space Provision to be transferred to the Management Company prior to transferring the Open Space Provision (or any part of it) to the Management Company AND shall not transfer the Open Space Provision (or any part of it) to the Management Company until it has received written approval from the Council of the Management Scheme for the Open Space Provision to be transferred to the Management Company and a Final Certificate for the Open Space Provision to be transferred to the Management Company.
- 4.5 If the Open Space Provision (or any part of it) is to be transferred to a Management Company pursuant to paragraph 4.4 above, then the Owner shall transfer the Open Space Provision to the Management Company subject to the following:
- 4.5.1 any rights of way, easements and other matters subsisting on the title to the Open Space Provision at the date of the transfer;
  - 4.5.2 a covenant on behalf of the Management Company that subject to any rights of way, easements and other matters referred to at paragraph 4.5.1 the Open Space Provision

shall be used only for the purposes of recreation and play and access shall be allowed at all times to members of the public subject to health and safety considerations as set out in the approved Management Scheme; and

- 4.5.3 a covenant on behalf of the Management Company to retain, manage and maintain the Open Space Provision transferred in perpetuity in accordance with the provisions of the approved Management Scheme.

### Schedule 3

#### CONTRIBUTIONS PAYABLE TO THE COUNCIL

##### 1. DEFINITIONS

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

**"CCG Contribution"**

means a financial contribution in the sum of £82,170.00 (eighty two thousand one hundred and seventy pounds) towards the following primary medical and healthcare facilities due to existing practices not having the physical capacity to cover increased demand arising from the Development: Kenyon Medical Centre, Bredon Avenue Surgery, Wolston Surgery, Willenhall Oak Oak Medical Centre, Willenhall Primary Care Centre and Revel Surgery

**"University Hospitals Coventry and Warwickshire NHS Trust Contribution"**

means a financial contribution in the sum of £133,754.00 (one hundred and thirty three thousand seven hundred and fifty four pounds) Index Linked towards the provision of additional health care services at University Hospital Coventry to meet patient demand arising from the Development

##### 2. UNIVERSITY HOSPITALS COVENTRY AND WARWICKSHIRE NHS TRUST CONTRIBUTION

- 2.1 The Owner shall pay to the Council the University Hospitals Coventry and Warwickshire NHS Trust Contribution prior to Occupation of the 1<sup>st</sup> Dwelling.
- 2.2 The Owner shall not Occupy or permit Occupation of any Dwellings until the University Hospitals Coventry and Warwickshire NHS Trust Contribution has been paid to the Council in full.

##### 3. CCG CONTRIBUTION

- 3.1 The Owner shall pay the CCG Contribution to the Council prior to the Occupation of the 1<sup>st</sup> Dwelling.
- 3.2 The Owner shall not Occupy or permit Occupation of any Dwellings until the CCG Contribution has been paid to the Council in full.

## Schedule 4

### SPORTS PROVISION

#### 1. DEFINITIONS

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

**"Capital Replacement Fund"**

means a fund of monies made up of 10 equal instalments of £29,250 (twenty nine thousand two hundred and fifty pounds) Index Linked and paid in accordance with paragraph 4.9 – 4.10 of this Schedule and which is to be held in the Capital Replacement Fund Account for the following purposes:

- (a) replacement of the 3G carpet (being the playing surface of the Sports Pitch);
- (b) replacement shockpad (being the underlay of the Sports Pitch)
- (c) equipment associated with the Sports Pitch;
- (d) fencing and re-decoration of fencing;
- (e) lights for the Sports Pitch;
- (f) re-lining and re-lamping of the Sports Pitch

**"Capital Replacement Fund Account"**

means a ringfenced part of the Council's existing interest bearing bank account into which the Capital Replacement Fund is to be paid

**"Community Use Agreement"**

means an agreement setting out the arrangements for use of the Sports Pitch by members of the general public setting out:

- (a) members of the local community and local sports organisations ('identified users') served by the Sports Pitch including any priority users;
- (b) governance structure;
- (c) duration/term (to be a minimum 50 year period unless a shorter period is agreed in writing by the Council);
- (d) booking arrangements;
- (e) fees/charging arrangements including arrangements to ensure that any fees to be charged and any fee reviews are reasonable;
- (f) marketing/promotional protocol;
- (g) opening hours;

- (h) a minimum availability of 15 hours a week for use by the identified users;
- (i) mechanism for monitoring use by identified users over time including provision of periodic surveys to the Council;
- (j) mechanism for approving variations to agreed terms over time (including dispute resolution mechanism),

informed by and consistent with the Community Use Objectives

**"Community Use Objectives"**

means:

- (a) providing new or enhanced opportunities for the local community and local sports organisations to participate in sport and other forms of physical activity;
- (b) increasing the number of people of all ages and abilities participating in sport and other physical activity including people with disabilities; and
- (c) providing affordable (principally not for profit) and inclusive access to sports/recreation facilities.

**"Completion Certificate"**

means a certificate of practical completion issued by the Council.

**"Construction Scheme"**

means a scheme providing details of the construction (shell and core specification) for the Sports Pitch

**"Final Certificate"**

means a certificate issued by the Council confirming that the Sports Pitch has been maintained to its reasonable satisfaction during the Maintenance Period and any remedial works have been completed to the satisfaction of the Council.

**"Maintenance Period"**

means a period of 12 (twelve) months.

**"Management and Maintenance Scheme"**

means a scheme for the ongoing management and maintenance of the Sports Pitch following its construction, setting out:

- (a) the standard of maintenance;
- (b) the allocation of management responsibilities including identification of key individuals/persons/bodies;
- (c) the funding and other financial arrangements for securing compliance with the identified management and maintenance responsibilities

**“Management Company”**

means an incorporated body which has its principal office in England and whose primary objects permit it to maintain and manage the Sports Pitch and which:

- (a) shall be a private company limited by shares or guarantee (unless otherwise agreed with the Council);
- (b) is funded so that it is able to undertake its management and maintenance duties in accordance with the Management and Maintenance Scheme, and which shall be able to draw down monies from the Management Company Forward Funding Escrow Account;
- (c) shall have a board which is able to accept a Council officer as a full voting member of the board if the Council so requests;

**“Management Company Maintenance Default Sum”**

means the sum of £60,000 (sixty thousand pounds) Index Linked to be available in the circumstances described in paragraph 4.19 below.

**“Management Company Maintenance Default Sum Account”**

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

- (a) to hold the Management Company Maintenance Default Sum;
- (b) within which monies can be drawn upon by the Council in the circumstances set out in paragraph 4.19; and
- (c) which shall be opened and closed in accordance with the provisions of this Schedule.

**“Management Company Forward Funding Sum”**

means the sum of £40,000 (forty thousand pounds) Index Linked to fund the operation of the Sports Pitch following its transfer to the Management Company (as applicable)

**“Management Company Forward Funding Sum Escrow Account”**

means an escrow account set up by the Owner:

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

**"Sports Pitch"**

means the 3G pitch and pavilion with associated car parking to be provided as part of the Development in accordance with the Planning Permission

**"Sports Pitch Transfer"**

means the transfer by the Owner to the Council or to a Management Company of the unencumbered freehold interest in the land on which the Sports Pitch is located on the following terms:

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

**2. SPORTS PITCH DETAILS**

2.1 The Owner covenants with the Council that it shall not Commence Development unless and until the Owner has submitted to the Council the following draft documents for its written approval:

- 2.1.1 the Construction Scheme;
- 2.1.2 the Community Use Agreement; and
- 2.1.3 the Management and Maintenance Scheme.

- 2.2 The Owner covenants with the Council that the Sports Pitch shall not be Commenced until and unless the Council has approved the Construction Scheme in writing.
- 2.3 The Owner covenants with the Council that the Sports Pitch shall not be opened for use unless and until:
  - 2.3.1 the Owner (or the long leaseholder of the Sports Pitch as applicable) and the Council (or the Council's nominee, as applicable) have entered into Community Use Agreement;
  - 2.3.2 the Council has approved the Management and Maintenance Scheme
- 2.4 The Management and Maintenance Scheme shall be implemented in accordance with the approved details and the terms of the Community Use Agreement

### 3. LAYING OUT OF THE SPORTS PITCH

- 3.1 Prior to the first Occupation of the Development, the Owner shall lay out, install, complete and make available for use the Sports Pitch in accordance with the approved Construction Scheme and notify the Council accordingly.
- 3.2 Following completion of the Sports Pitch:
  - 3.2.1 the Owner shall serve notice on the Council inviting it to inspect the Sports Pitch and to issue a Completion Certificate confirming that such Sports Pitch has been completed to the Council's reasonable satisfaction and in accordance with the approved Construction Scheme;
  - 3.2.2 if the Council inspects the Sports Pitch and notifies the Owner in writing of necessary remedial works on the basis the Sports Pitch as constructed do not accord with the approved Construction Scheme, the Owner shall complete such remedial works to the reasonable satisfaction of the Council; and
  - 3.2.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting it to inspect the remedial works identified by it pursuant to paragraph 3.2.2 above and to issue a Completion Certificate confirming that such works have been completed to the Council's reasonable satisfaction in accordance with the approved Construction Scheme

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

- 3.3 In the event of a dispute as to whether remedial works identified by the Council are necessary, the dispute may be referred to an Expert in accordance with Clause 16 of this Deed.
- 3.4 On the expiration of the Maintenance Period:
  - 3.4.1 the Owner shall serve notice on the Council inviting it to inspect the Sports Pitch and issue a Final Certificate confirming that such works have been maintained to the Council's reasonable satisfaction and in accordance with the approved Construction Scheme
  - 3.4.2 if the Council inspects the Sports Pitch and identifies necessary remedial works on the basis the Sports Pitch as constructed and maintained do not accord with the approved Construction Scheme, the Owner shall complete such remedial works to the reasonable satisfaction of the Council; and
  - 3.4.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting it to inspect the remedial works identified by it pursuant to paragraph 3.4.2 above and to issue a Final Certificate confirming that such works have been completed to the Council's reasonable satisfaction in accordance with the approved Construction Scheme



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

3.5 The Owner shall:

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

3.5.2 allow free unrestricted use of and access to the Sports Pitch for the general public at all reasonable times of the day and night in accordance with the Community Use Agreement;

#### **4. TRANSFER OF SPORTS PITCH**

4.1 Prior to the issue of a Final Certificate for the Sports Pitch the Owner shall offer in writing to transfer to the Sports Pitch to the Council

4.2 In the event the Council confirms in writing to the Owner that it wishes to accept the offer of the transfer of the Sports Pitch made pursuant to paragraph 4.1 above and therefore the Sports Pitch is to be transferred to the Council, then:

4.2.1 the Owner and the Council shall use reasonable endeavours to agree the reasonable terms for the transfer of the Sports Pitch and to agree all of the provisions in detail of the Sports Pitch Transfer within three months of the date of the notification by the Council to the Owner that it wishes to accept the offer of the transfer;

4.2.2 on agreement of the form of the Sports Pitch Transfer, the Owner shall deliver to the Council the Sports Pitch Transfer executed by the Owner;

4.2.3 on delivery of the executed Sports Pitch Transfer by the Owner, the Council shall execute and complete the Sports Pitch Transfer;

4.2.4 the transfer will take place as soon as practicably possible after the Final Certificate has been issued in respect of the Sports Pitch; and

4.2.5 the Owner shall on completion of such Sports Pitch Transfer pay to the Council a commuted sum to be agreed prior to the completion of the Sports Pitch Transfer such commuted sum to be reasonably assessed by the Owner and the Council and not to exceed the combined sums payable under the Capital Replacement Fund, the Management Company Maintenance Default Sum and the Forward Funding Sum and to be paid to the Council as either one lump sum or in instalments as the Owner and the Council may agree.

4.3 The Council is not in any event obliged to take a transfer of the Sports Pitch until a Final Certificate for the Sports Pitch has been issued.

4.4 If the Council confirms in writing to the Owner that it does not wish to accept the offer to transfer the Sports Pitch made by the Owner pursuant to paragraph 4.1 above or where the Council has failed to respond to the Owner's offer pursuant to paragraph 4.1 above, after the expiry of 3 (three) months of the date of the Owner's offer pursuant to paragraph 4.1 or the issue of the Final Certificate (whichever is the later)), the Owner may transfer the Sports Pitch to a Management Company PROVIDED THAT such transfer shall be subject to paragraph 4.5 below and thereafter paragraphs 4.6 – 4.19 of this Schedule shall apply.

4.5 Prior to the transfer of the Sports Pitch to a Management Company:

4.5.1 a Final Certificate for the Sports Pitch must have been issued;

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

- 4.5.3 the Owner must have set up the Management Company Forward Funding Sum Escrow Account and provided evidence to the Council that the account has been set up and the Management Company Forward Funding Sum deposited;
- 4.5.4 the Council must have received the first instalment of the Capital Replacement Fund;
- 4.5.5 the Council must have received the Management Company Maintenance Default Sum.

#### **Management Company Forward Funding Sum**

- 4.6 The Management Company Forward Funding Sum Escrow Account shall be retained for a period expiring 10 years after the date of the transfer of the Sports Pitch to the Management Company.
- 4.7 During the period of 10 years referred to in paragraph 4.6 the Management Company may if it considers it necessary draw down monies from the Management Company Forward Funding Escrow Account in order to allow it to meet its obligations under the Management and Maintenance Scheme and the Community Use Agreement.
- 4.8 The Management Company Forward Funding Sum Escrow Account shall be closed 10 years after the date of the transfer of the Sports Pitches to the Management Company and any monies whether capital or interest sums remaining in either account shall be released to the Management Company to be used towards the ongoing management of the Sports Pitches.

#### **Capital Replacement Fund**

- 4.9 The Owner shall pay the first instalment of the Capital Replacement Fund to the Council upon issue of the Completion Certificate in relation to the Sports Pitch pursuant to paragraph 3.2 above.
- 4.10 On the first anniversary of payment to the Council of the first instalment of the Capital Replacement Fund pursuant to paragraph 4.9 above the Owner shall pay the second instalment of the Capital Replacement Fund to the Council and an instalment for each anniversary thereafter until all ten instalments have been paid to the Council.
- 4.11 The Capital Replacement Fund shall be held by the Council until 18 months have passed after the tenth anniversary of the date of the transfer of the Sport Pitch to the Management Company and during the time it is open the person who is operating the Sports Pitches (whether that is the Manco or any other third party approved to do so) that person may if so needed and subject to giving the Council 10 Working Days' notice draw down monies for the purposes specified in the definition of Capital Replacement Fund.
- 4.12 Once the period in paragraph 4.11 has expired, the Council shall return any remaining part of the Capital Replacement Fund monies whether capital or interest sums to the Owner (being for the purpose of this paragraph the person that made the payment of the Capital Replacement Fund).

#### **Management Company Maintenance Default Sum**

- 4.13 The Owner shall pay the Management Company Maintenance Default Sum to the Council upon issue of the Completion Certificate in relation to the Sports Pitch pursuant to paragraph 3.2 above.
- 4.14 The Management Company Maintenance Default Sum shall be held by the Council until 18 months have passed after the tenth anniversary of the date of the transfer of the Sports Pitch to the Management Company and unless and until the circumstances of paragraph 4.19 have occurred then on each anniversary of the payment of the Management Company Maintenance Default Sum to the Council the Council shall return to the Owner the sum of £6000 (six thousand) pounds PROVIDED THAT no payment is to be returned to the Owner on the first anniversary and repayments will only be made from the second anniversary onwards.
- 4.15 During the time the Management Company Maintenance Default Sum is being held the monies shall be available to be drawn upon by the Council in the event the circumstances of paragraph 4.19 apply and in such amounts as the Council sees fit.

- 4.16 Once the period in paragraph 4.14 has expired, the Council shall return any remaining part of the Management Company Maintenance Default Sum monies whether capital or interest sums to the Owner (being for the purposes of this paragraph the person that made the payment of the Management Company Maintenance Default Sum).
- 4.17 The Management Company shall at the end of its first year be obligated to employ certified auditors to assess the performance of the Management Company in terms of its financial performance and to review its annual statement of accounts and the Management Company shall submit the auditor's report to the Council.
- 4.18 If the Sports Pitch is to be transferred to a Management Company pursuant to paragraph 4.4 above, then the Owner shall transfer the Sports Pitch to the Management Company subject to the following:
- 4.18.1 any rights of way, easements and other matters subsisting on the title to the Sports Pitch at the date of the transfer;
  - 4.18.2 a covenant on behalf of the Management Company that subject to any rights of way, easements and other matters referred to at paragraph 4.5.1 the Sports Pitch shall be used only for the purposes of recreation and play and access shall be allowed at all times to members of the public subject to health and safety considerations as set out in the approved Management and Maintenance Scheme and the Community Use Agreement; and
  - 4.18.3 a covenant on behalf of the Management Company to retain, manage and maintain the Sports Pitch transferred in perpetuity in accordance with the provisions of the approved Management and Maintenance Scheme and Community Use Agreement;
- 4.19 In the event the Management Company fails to act in accordance with the Management and Maintenance Scheme and/or the Community Use Agreement or the Management Company becomes insolvent or otherwise ceases to exist then the Council may (at its discretion) enter onto the Site together with any relevant personnel or equipment to ensure the performance of the Community Use Agreement and/or the Management and Maintenance Scheme and/or carry out any works it considers reasonably necessary to maintain or make good any defect or damage and the Council shall be entitled to full reimbursement by the Management Company of all costs and expenses in performing the said obligations. In the event the Management Company does not have adequate funds to cover these works in default or ceases to exist the Council shall be entitled to recover such expenses and costs from the Management Company Maintenance Default Sum Account and/or the Capital Replacement Fund Account (as appropriate) subject to giving written notice of not less than 11 Working Days to the Management Company stating the nature of the breach PROVIDED THAT such notice is not required to be given if the Management Company has ceased to exist.

## Schedule 5

### CONTRIBUTIONS PAYABLE TO THE COUNTY COUNCIL

#### 1. DEFINITIONS

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

<b>"Early Years Contribution"</b>	means a financial contribution in the sum of £128,785.00 (one hundred and twenty eight thousand seven hundred and eighty five pounds) towards additional early years provision to cater for early years need arising in connection with the Development including additional or improved provision at Blue Bell Woods Day Nursery and/or Woodlands pre-school
<b>"Education Contribution"</b>	means the aggregate of the Early Years Contribution, Primary Education Contribution, SEND Education Contribution, Secondary Education Contribution and Post 16 Education Contribution
<b>"Post 16 Education Contribution"</b>	means a financial contribution in the sum of £116,417 (one hundred and sixteen thousand four hundred and seventeen pounds) Index Linked towards additional post 16 education provisions to cater for post 16 education need arising in connection with the Development
<b>"Primary Education Contribution"</b>	means a financial contribution in the sum of £676,121.00 (six hundred and seventy six thousand one hundred and twenty one pounds) Index Linked towards the of additional primary provision to cater for primary education need arising in connection with the Development including additional or improved facilities at Binley Woods Primary School
<b>"PROW Contribution"</b>	means a financial contribution in the sum of £7,630 (seven thousand six hundred and thirty pounds) Index Linked to allow for improvements to public rights of way within a 1.5 mile radius of the Development
<b>"Road Safety Contribution"</b>	means a financial contribution of £10,275 (ten thousand two hundred and seventy five pounds) to support sustainable transport road safety initiatives within the community associated with the Development
<b>"Secondary Education Contribution"</b>	means a financial contribution in the sum of £582,087.00 (five hundred and eighty two thousand and eighty seven pounds) Index Linked to be applied towards the provision of additional secondary school provision to cater for secondary education need arising in connection with the Development including an expansion to Bilton School

<b>"SEND Education Contribution"</b>	means a financial contribution in the sum of £72,762 (seventy two thousand seven hundred and sixty two pounds) Index Linked to be applied towards the provision of additional primary and secondary SEND provision to cater for primary and secondary SEND education need arising in connection with the Development
<b>"Traffic Calming Contribution"</b>	means a financial contribution in the sum of £6,000 (six thousand pounds) towards the extension of the existing 30mph speed limit on the A428 beyond the Site access junction

**2. EDUCATION CONTRIBUTION**

- 2.1 The Owner shall pay the Education Contribution to the County Council in two instalments:
  - 2.1.1 50% prior to Commencement of Development; and
  - 2.1.2 50% prior to first Occupation;
- 2.2 The Owner shall not Commence Development until it has paid 50% of the Education Contribution to the County Council in full
- 2.3 The Owner shall not Occupy or permit Occupation of any Dwellings until it has paid the remaining 50% of the Education Contribution to the County Council in full

**3. PROW CONTRIBUTION**

- 3.1 The Owner shall pay the PROW Contribution to the County Council prior to Occupation of the 1<sup>st</sup> Dwelling.
- 3.2 The Owner shall not Occupy or permit Occupation of any Dwellings until the PROW Contribution has been paid to the County Council in full.

**TRAFFIC CALMING CONTRIBUTION**

- 3.3 The Owner shall pay the Traffic Calming Contribution to the County Council prior to Commencement.
- 3.4 The Owner shall not Commence Development unless and until the Traffic Calming Contribution has been paid to the County Council in full.

**4. ROAD SAFETY CONTRIBUTION**

- 4.1 The Owner shall pay the Road Safety Contribution to the County Council prior to Occupation of the 1<sup>st</sup> Dwelling.
- 4.2 The Owner shall not Occupy or permit Occupation of any Dwellings until the Road Safety Contribution has been paid to the County Council in full.

## Schedule 6

### COUNCIL'S COVENANTS

1. The Council covenants with the Owner:
  - 1.1 to comply with each obligation, covenant and undertaking on the part of the Council contained in this Deed;
  - 1.2 not to use or apply the Contributions other than for the purposes for which the Contributions are paid, as specified in this Deed;
  - 1.3 that if any, all or any part of the Contributions save for the Capital Replacement Fund and the Management Company Maintenance Default Sum (including any interest earned) have not been expended or committed on the day 10 (ten) years after the day on which the relevant payment was received or on the date the Deed ends (whichever is the earlier), the Council shall repay the unspent portion to the party that made the relevant Contribution together with any interest at the base lending rate of Lloyds Bank plc accrued from the date of payment to the date of repayment;
  - 1.4 in relation to the University Hospitals Coventry and Warwickshire NHS Trust Contribution:
    - 1.4.1 the Council shall put in place a Contribution Contract with the University Hospitals Coventry and Warwickshire NHS Trust (or successor body from time to time);
    - 1.4.2 following a reasonable request by the Owner, to provide the Owner with details of whether the University Hospitals Coventry and Warwickshire NHS Trust Contribution (or any part thereof) has been passed to the University Hospitals Coventry and Warwickshire NHS Trust; and
    - 1.4.3 for the purposes of paragraph 1.3 above, if the Council has passed the University Hospitals Coventry and Warwickshire NHS Trust Contribution (or any part thereof) to the University Hospitals Coventry and Warwickshire NHS Trust it shall be treated as expended and/or committed.
- 1.5 in relation to the CCG Contribution:
  - 1.5.1 the Council shall put in place a Contribution Contract with the Rugby and Coventry Clinical Commissioning Group ("**CCG**") (or successor body from time to time)
  - 1.5.2 following a reasonable request by the Owner, to provide the Owner with details of whether the CCG Contribution (or any part thereof) has been passed to the CCG; and
  - 1.5.3 for the purposes of paragraph 1.3 above, if the Council has passed the CCG Contribution (or any part thereof) to the CCG it shall be treated as expended and/or committed.

## Schedule 7

### COUNTY COUNCIL'S COVENANTS

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

**SIGNATURE PAGE(S)**

**EXECUTED** as a deed )  
by affixing the common seal of )  
**RUGBY BOROUGH COUNCIL** )  
in the presence of: )

[Redacted]

\_\_\_\_\_  
Authorised Signatory



149/23

2119/23

**EXECUTED** as a deed )  
by affixing the common seal of )  
**WARWICKSHIRE COUNTY COUNCIL** )  
in the presence of: )

[Redacted]

\_\_\_\_\_  
~~Authorised Signatory~~ PF  
Designated Officer



**EXECUTED** as deed by **BRANDON ESTATES** )  
**LIMITED**, a company incorporated in Jersey acting by )  
**ROGER LAL** who in accordance with the laws of )  
that territory is acting under the authority of the )  
company

Signature in the name of **BRANDON ESTATES LIMITED**

[Redacted]

Signature of **ROGER LAL**

[Redacted]



Signed as a deed by  
ANTHONY JOHN COPELAND



in the [REDACTED]  
[REDACTED]

Signature of witness: \_\_\_\_\_

Name (in BLOCK CAPITALS): LISA MCGINN

Address: [REDACTED]  
[REDACTED]  
[REDACTED]